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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 ULKU ROWE,

4 Plaintiff,

5 v.

19 Civ. 8655 (JHR)

6 GOOGLE LLC,

7 Defendant.

Trial

8 -----x
9 New York, N.Y.
10 October 18, 2023
11 8:50 a.m.

12 Before:

13 HON. JENNIFER H. REARDEN,

14 District Judge
15 -and a jury-

16 APPEARANCES

17 OUTTEN & GOLDEN, LLP
18 Attorneys for Plaintiff
19 BY: CARA E. GREENE
20 GREGORY S. CHIARELLO
21 SHIRA Z. GELFAND

22 PAUL HASTINGS LLP
23 Attorneys for Defendant
24 BY: KENNETH W. GAGE
25 SARA B. TOMEZSKO

Also Present: Vincent Yang, Paralegal (Outten & Golden)
Andrew Velazquez, Google Rep.
Jean Gutierrez, Paralegal (Paul Hastings)

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(Trial resumed; jury not present)

THE COURT: I wanted to cover a couple of housekeeping items. And thank you so much for the letter yesterday. It was very helpful. I have rulings for you this morning. I think that will streamline things.

So based on letter No. 1 from you all yesterday, which included information about the anticipated schedule, I wanted to say something to the jury this morning about our trajectory over the balance of the week. My understanding is that Ms. Rowe anticipates resting at either the end of the day today or tomorrow morning, and Google anticipates resting tomorrow afternoon.

MS. GREENE: That's correct, your Honor.

MR. GAGE: That's correct.

THE COURT: So with that in mind, I plan to tell the jurors that the presentation of evidence is expected to end sometime tomorrow afternoon, and that we, therefore, project that the case will go to them on Friday.

Does that sound right?

MR. GAGE: It does, your Honor.

THE COURT: I don't think I can be any more specific with them than that right now, so that's what I'll do when they come in.

Another housekeeping item, Google, I understand after plaintiff rests, you intend to make a motion for directed

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1 verdict. So the way I like to handle that is if Ms. Rowe rests
2 at the end of the day today, so like around 4:30, I will excuse
3 the jury and then hear argument and issue my ruling, but if
4 plaintiff does not rest until, say, early tomorrow morning or
5 at some other time that's not at the end of the day, to avoid
6 taking up the time of the jury and any witnesses, I will just
7 ask you for a top-line argument in the moment, and then we'll
8 have fuller argument at the end of the day after the jurors
9 have been excused.

10 MR. GAGE: Understood, your Honor.

11 THE COURT: All right. One other thought that I had,
12 just thinking about how to save you all transaction costs and
13 save everybody's time, if you want to during breaks eat in
14 here, that is fine with me. I've seen a few of you in the
15 cafeteria. Even to walk there and back, it takes time. So I
16 don't know what you've been doing about food, but if you're
17 bringing it in, it doesn't seem like you're covering all needs
18 for the whole day. If you want to bring in food and eat in the
19 courtroom during breaks — actually, Ms. Williams — I didn't
20 ask Ms. Williams — is that OK? Does that run afoul?

21 THE DEPUTY CLERK: That is fine, as long as they don't
22 spill anything on the carpet.

23 MR. GAGE: I will behave.

24 THE COURT: There might be a corollary.

25 THE DEPUTY CLERK: And clean up behind yourselves,

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1 please.

2 MS. GREENE: Of course.

3 THE COURT: So the evidentiary disputes, I'm about to
4 turn to those now.

5 DX 38 is the 2020 engineering-wide leveling guide.
6 Plaintiff's objections are overruled. The exhibit will be
7 admitted. I will now briefly explain the basis for my ruling.

8 During Mr. Grannis' examination last week, he was
9 questioned about PX 8. He established that OCTO referred
10 technical directors to the generic engineering leveling guide.
11 Further, Mr. Wilson, when deposed, testified that DX 38 was
12 "substantially the same" as the guide referred to in PX 8. I
13 see that defendants stated in its summary judgment reply brief
14 that there was "no evidence that anyone consulted the 2020
15 engineering-wide leveling guide in connection with hiring any
16 technical directors in OCTO. Based on the date alone, it could
17 not have been used in hiring plaintiff as an L8 technical
18 director in 2017." However, that statement does not neutralize
19 the probative value of the document as it is relevant to the
20 distinction in responsibilities between L8 and L9 at the time
21 Ms. Rowe made her complaint.

22 I'm going to hold on PX 122 through 128 for the time
23 being, as there are a few questions I have about that category
24 before issuing my ruling.

25 I will turn next to the Burdis designations.

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1 Plaintiff's objections are overruled. Those designations will
2 be admitted. Whether Ms. Burdis thought that she was
3 personally accused of wrongdoing by Ms. Rowe is relevant to
4 Ms. Burdis' credibility and the weight of her testimony.
5 Accordingly, this designation is not substantially outweighed
6 by a danger of confusing the issues or misleading the jury
7 under Rule 403.

8 Next I'm going to simultaneously address Mr. Wilson's
9 and Mr. Eryurek's deposition designations, as those disputes
10 are driven by similar arguments and concerns. In brief,
11 neither Mr. Wilson nor Mr. Eryurek was a decision-maker with
12 respect to Ms. Rowe's hire, but both have firsthand knowledge
13 of the work she performed in OCTO. Therefore, although their
14 testimony regarding Ms. Rowe's qualifications for her role is
15 not relevant, their testimony about the actual work she
16 performed is relevant.

17 With that in mind, beginning with Mr. Wilson's
18 designations, 77, lines 10 through 19, will not be admitted
19 because the designation concerns Mr. Wilson's knowledge and
20 opinions of Ms. Rowe's background and qualifications.

21 94, line 7, through 95, line 18, will be admitted
22 because the designation relates to Mr. Wilson's knowledge of
23 Ms. Rowe's actual work.

24 97, line 17, through 98, line 9, will not be admitted
25 because Mr. Wilson's conversations with Mr. Eryurek about

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1 leveling are not relevant to plaintiff's leveling decision or
2 her work.

3 167:21 through 168:67 will be admitted because the
4 designation relates to Mr. Wilson's knowledge of Ms. Rowe's
5 actual work.

6 171:20 through 172:2 will be admitted because the
7 designation relates to Mr. Wilson's knowledge of Ms. Rowe's
8 actually work.

9 Now turning to Mr. Eryurek's designations. 64:2
10 through 65:10 will not be admitted because the designation
11 concerns Mr. Eryurek's knowledge and opinions of Ms. Rowe's
12 background and qualifications.

13 66:5 through 17 will be admitted because the
14 designation relates to Mr. Eryurek's knowledge of Ms. Rowe's
15 actual work.

16 And 67:4 through 14 will be admitted for the same
17 reason, and I note that this does not constitute hearsay
18 because Mr. Eryurek is not relaying another individual's
19 statement.

20 Now I want to address —

21 MR. GAGE: I just want to make sure I heard you. 67:4
22 through 14 is admitted?

23 THE COURT: Yes.

24 MR. GAGE: OK.

25 THE COURT: So Mr. Wilson's and Mr. Eryurek's

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1 testimony with respect to their subsequent roles, Google argues
2 that its designations are meant to inform the jury "when the
3 witness transferred to a different role." However, none of the
4 relevant designations seem to go to that. They don't include a
5 transfer date, so how will the jury know from Mr. Wilson's and
6 Mr. Eryurek's testimony when they transferred to another role?

7 MR. GAGE: Your Honor, it will be unclear, but we want
8 the jury to know that they moved out of OCTO, if I can add,
9 your Honor, in part because of testimony we anticipate may be
10 offered by plaintiff's damages expert in her deposition. When
11 we did discovery, she talked about the reliance on compensation
12 information for these L9s for an extended period of time, and
13 we want the jury to know that he left OCTO. If he were here
14 live, we'd get a date, but he's not, and so we're stuck with
15 what's in the transcript.

16 MS. GREENE: Your Honor, both of these individuals
17 moved from OCTO to Mr. Shaukat's organization. Mr. Shaukat was
18 here. They could have asked him about what happened once they
19 were in Mr. Shaukat's organization, but it's confusing to the
20 jury and not probative of the issues here, when they had the
21 opportunity to question the witness who was in a position to
22 answer and was live here in court.

23 THE COURT: All right. Just a moment. I'm looking at
24 this again.

25 I agree with plaintiff on this. Any probative value

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here is substantially outweighed by a danger of confusing the issues for the jury.

I'm now going to turn back to PX 122 through 128.

I have a question, first, about what is in and what is out here in terms of what you're asking for a ruling on. So the header includes 122 through 128, but plaintiff apparently only seeks to publish portions of performance evaluations for Ms. Rowe and her comparators, Plaintiff's Exhibit 123 through 127.

MS. GREENE: Your Honor, I believe 122 is Mr. Breslow's packet.

THE COURT: Yes, that's correct, and 128 is Mr. Wilson's.

MS. GREENE: I'm sorry, your Honor, what was the question?

THE COURT: So in the header you say 122 through 128, but then the text says that you only seek to publish portions of 123 through 127.

MS. GREENE: Your Honor, those documents are all in because of our prior stipulation that documents to which there are no objections have been deemed admitted into evidence. It's only the portions that will be shown to the jury today that we would ask for an instruction to be given.

THE COURT: Why are you only seeking a limiting instruction on this now? You didn't do it in the joint

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1 pretrial order or any other prior point.

2 MS. GREENE: Your Honor, we've actually given this
3 some consideration over the night, and we're willing to
4 withdraw our request for an instruction.

5 THE COURT: Very good. All right. So that just
6 leaves the discovery dispute raised at the end of the letter
7 and —

8 MR. GAGE: May I respond, your Honor, since I didn't
9 have an opportunity to respond in the letter?

10 THE COURT: Yes, you may. Yes, you may.

11 MR. GAGE: Thank you, your Honor.

12 I would note that we got this request from opposing
13 counsel at almost 3 o'clock yesterday afternoon, and I was
14 otherwise occupied before the letter was finalized. So that's
15 my apologies for taking time.

16 THE COURT: No, no, that's all right.

17 MR. GAGE: Your Honor, here's the background.
18 Ms. Rowe filed her second amended complaint in February of 2021
19 after motion practice. Judge Gorenstein, in his decision
20 allowing plaintiff to amend her complaint, expressly prohibited
21 further discovery on this claim other than Google was allowed
22 to take some additional deposition time with Ms. Rowe about
23 that.

24 We then, as we were approaching our first trial date,
25 so last November as we were approaching our January trial date,

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1 we produced the documents that have been identified and I
2 believe admitted into evidence as D74, D76, D77, and D78.
3 We've produced those pursuant to our obligation under
4 Rule 26(a)(3)(A). Ms. Rowe had 14 days to object to our
5 production. She subsequently filed a motion *in limine* to
6 preclude us from using those documents saying that the
7 production was untimely. The Court denied that motion. Judge
8 Schofield denied that motion saying that plaintiff's not been
9 prejudiced by the timeliness or not of the production of those
10 documents, and then fast-forward yesterday afternoon at 2:43,
11 they're asking us to do more discovery after Judge Gorenstein
12 told them they didn't get any additional discovery.

13 So, your Honor, candidly, we haven't had time nor
14 should we have to do this additional discovery.

15 THE COURT: All right. Go ahead.

16 MS. GREENE: Your Honor, this is not additional
17 discovery. This is discovery that they were obligated to
18 produce as part of their supplementation. We wouldn't have
19 known that there were additional documents like those four
20 exhibits that they sought to admit but for Mr. Vardaman's
21 testimony here at trial that these documents did exist. So
22 Google was the one who was aware of their existence, not us.
23 It was their obligation to supplement. They did not. At this
24 point there's been testimony about the documents — they've
25 brought them into court — and the relevance, and we should be

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1 entitled to the remainder of those documents, not the ones that
2 they cherry-picked.

3 THE COURT: All right. Let me just clarify something,
4 and then I want to bring in the jury. I'm not going to rule on
5 this right now, this one. I want to think about it and read
6 what you argued.

7 So Mr. Vardaman in his deposition, he said that he
8 "didn't know" whether he made any documentation with respect to
9 Ms. Rowe asking to be considered for the role in Kirsten's
10 organization. He also represented that he did not recall
11 "anything in writing regarding Ms. Rowe that he communicated to
12 Kirsten," though he did "recall that it was much more ad hoc."

13 At trial Mr. Vardaman testified that he prepared these
14 documents to kind of keep this running so that if he got a call
15 from Kliphouse, he could provide her the most relevant
16 information, updated information. That's the transcript at
17 663. He also stated that the document consisted of high-level
18 distilled notes.

19 I want to know, please, what discovery request would
20 these documents have fallen under? You don't have to tell me
21 now, but I'd like to know.

22 MS. GREENE: Your Honor, we will let you know that.

23 THE COURT: All right.

24 MS. GREENE: May I just raise one more thing —

25 THE COURT: Yes.

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1 MS. GREENE: — before the jury comes in?

2 With respect to Mr. Wilson and Mr. Eryurek, they're
3 not here. Their video deposition testimony was corrupted, and
4 so we will be using readers for those testimonies. And I
5 assume your Honor would like to instruct the jury or give them
6 some clarification that the readers are not Mr. Wilson and
7 Mr. Eryurek themselves.

8 THE COURT: OK. Have you both — have you talked
9 about this?

10 MS. GREENE: We have.

11 THE COURT: All right. That's fine.

12 MR. GAGE: And one last thing before the jury comes
13 in, your Honor, and this relates to — I think you said you
14 were going to think about 122 through 128. I believe an issue
15 may come up in Mr. Grannis' remaining testimony. We believe,
16 and we alerted counsel last night to this position, that those
17 documents, other than Ms. Rowe's performance review, are beyond
18 the scope of the cross-examination of Mr. Grannis.

19 So to the extent plaintiff's counsel plans to put
20 these other documents, these other performance reviews, in
21 front of Mr. Grannis, we wanted to alert your Honor that that's
22 beyond the scope of his cross. Never asked him about those
23 other documents. Ms. Rowe's was the only one I asked him
24 about, and I just didn't want this to pop up in the first five
25 minutes with the jury in the room, your Honor.

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1 THE COURT: OK. One moment.

2 Actually, 122 through 128, I did not say I was going
3 to think about it. Ms. Greene said she withdrew the objection.

4 MR. GAGE: Oh, I'm sorry.

5 THE COURT: OK.

6 MS. GREENE: This is a slightly different issue,
7 though, your Honor.

8 THE COURT: Yes, I understand. I just wanted to
9 clarify that.

10 So what is your position on the other performance
11 reviews?

12 MS. GREENE: Your Honor, any testimony that I seek
13 from Mr. Grannis will be very much connected to his questioning
14 yesterday — or Friday by Mr. Gage. So I would request that
15 your Honor wait until I lay the foundation and establish how it
16 is responsive to the questions that he was asked before making
17 any sort of decision.

18 THE COURT: All right. I think what we're going to
19 have to do on this, because I didn't anticipate this, I didn't
20 look at this, I didn't look back at this testimony, so,
21 Mr. Gage, you're going to have to object in the moment.

22 MR. GAGE: OK.

23 THE COURT: And unfortunately, we might have to have a
24 sidebar for you to go through with me what was said on Friday
25 and compare it to what Ms. Greene is trying to ask now.

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1 MR. GAGE: OK.

2 THE COURT: All right. Ms. Williams —

3 MS. TOMEZSKO: I just wanted to make sure, to make
4 Ms. Gutierrez and Mr. Yang's lives easier, the specific
5 objections that your Honor ruled on this morning, I just want
6 to make clear the objections to Mr. Wilson's testimony at 75:2
7 to 76:6 was the ruling that it is irrelevant and not going to
8 come in, does that apply to both that designation and 152:7 to
9 20?

10 THE COURT: I'm sorry. I'm trying to find that now in
11 my notes.

12 MS. TOMEZSKO: It's page 8 in the letter, your Honor,
13 at the top in that chart.

14 THE COURT: Did I give a ruling on those?

15 MS. TOMEZSKO: I wasn't sure, which is why I was
16 seeking clarification, your Honor.

17 MS. GREENE: Your Honor, we did find it in the
18 transcript.

19 MS. TOMEZSKO: That is ruled. And 153:7 through 20 as
20 well?

21 MS. GREENE: I'm sorry. I may have misspoke. I don't
22 think there was a ruling on it.

23 THE COURT: All right. So on those, 75:2 through 76:6
24 and 153:7 to 20, plaintiff's objection is sustained, and those
25 are not coming in.

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1 MS. TOMEZSKO: And one more on page 10. This is
2 Mr. Eryurek's deposition testimony. It's the 108:10 to 110:4
3 and 112:6 through 21.

4 THE COURT: The same ruling.

5 MS. TOMEZSKO: OK. Thank you for the clarification.

6 MS. GREENE: Your Honor.

7 THE COURT: Yes.

8 MS. GREENE: We anticipate the order this morning to
9 be Mr. Grannis, Mr. Harteau, and the readings of Mr. Eryurek
10 and Mr. Wilson. We may need a short minute to just update
11 their transcripts to eliminate the portions that your Honor's
12 ruled on this morning.

13 THE COURT: I understand.

14 MS. GREENE: I just wanted to alert the Court to that.

15 THE COURT: How much time do you think that's going to
16 take, Ms. Gutierrez?

17 MS. GUTIERREZ: It's not going to take much time for
18 me. They've got to adjust the copy. I don't know.

19 THE COURT: Right, we're having readers, right, right.
20 We'll have to time a break such that you can do that before
21 Eryurek and Wilson, right?

22 MS. GREENE: OK. That would be perfect. I expect
23 that will work fine.

24 THE COURT: Somebody say something to clue me in, like
25 this would be a good time to take a break related to that

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1 issue, something like that.

2 MS. GREENE: All right.

3 THE COURT: All right. Ms. Williams, the third time
4 is the charm.

5 MR. GAGE: Your Honor, should we put the witness on
6 the stand?

7 THE COURT: Yes, please.

8 (Continued on next page)

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1 (Jury present)

2 THE COURT: Good morning, everyone. Please be seated.

3 Mr. Grannis.

4 Members of the jury, good morning. I wanted to let
5 you know that the latest thinking is that Ms. Rowe anticipates
6 resting at either the end of the day today or early tomorrow
7 morning. Google anticipates resting tomorrow afternoon. After
8 that, there are two other components. One is closing arguments
9 and one is the jury charge where I will be instructing you as
10 you prepare to head into deliberations.

11 Taking all that into account, we now expect that the
12 case will be submitted to you on Friday, and I wanted to let
13 you know that now for planning purposes. And you will, please,
14 let Ms. Williams know anything you need from the Court to help
15 you with any work issues or anything else if we could be
16 helpful.

17 JUROR: Will deliberations go into next week, then?

18 THE COURT: I suppose that's possible. I'm not going
19 to say anything about how long or short you should deliberate,
20 and you shouldn't read into anything that I say to mean — to
21 have any meaning with respect to how long or short you should
22 deliberate. It's just depends on how the process unfolds once
23 you start deliberating.

24 All right. Mr. Grannis, I remind you that you're
25 still under oath. OK.

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Grannis - Redirect

1 WILLIAM GRANNIS, resumed.

2 CONTINUED REDIRECT EXAMINATION

3 BY MS. GREENE:

4 Q. Good morning, Mr. Grannis.

5 A. Good morning.

6 Q. I know it's been some number of days, but do you remember
7 on Friday being asked some questions by Mr. Gage about the
8 leveling distinctions between Levels 8 and 9 as they existed in
9 2016 and 2017?

10 A. Generally remember that.

11 Q. And Mr. Gage asked you about engineering leveling guides
12 that existed, correct?

13 A. Correct.

14 Q. And Mr. Gage asked you whether there existed engineering
15 guidance on distinctions between Level 8 and 9. Do you recall
16 that?

17 A. I don't recall that exact wording, but generally speaking,
18 that sounds about right.

19 Q. Do you remember him showing you D38, the engineering
20 leveling guide, to refresh your recollection?

21 A. Yes.

22 Q. This is a yes-or-no question. Were you provided with any
23 leveling guide to assist you in the hiring process during the
24 2016 and 2017 time period?

25 A. Yes.

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Grannis - Redirect

1 Q. Your testimony is in 2016 and 2017, you were provided with
2 a leveling guide to assist you?

3 A. Yes.

4 MS. GREENE: OK. Can we go to his deposition
5 transcript, line 48 — I mean page 48, excuse me, line 16
6 through 19.

7 (Video played)

8 Q. That was your testimony at deposition, correct?

9 A. It was, because the technical director didn't have any
10 leveling guidance but engineering did.

11 Q. My question to you was any leveling guide. I asked you if
12 you received a leveling guide. You said no. You didn't say an
13 engineering leveling guide but not a technical director guide,
14 correct? That wasn't your testimony that we just heard?

15 A. Well, you asked me about technical director just before you
16 asked me question, so that's why I answered no, we didn't have
17 one.

18 Q. Now, in any event, the engineering-wide leveling guide
19 doesn't represent the specific expectations for technical
20 directors, correct?

21 A. Correct, it was generalized engineering guidance.

22 Q. And you would agree that ladders for job families are more
23 descriptive in terms of requirements than the general
24 engineering leveling guide, correct?

25 A. Correct.

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Grannis - Redirect

1 Q. The only leveling guide that exists for OCTO is the
2 technical solutions consultant leveling ladder, correct?

3 A. That's correct. Today that's correct, yes.

4 Q. Let's look at Exhibit D63.

5 Now, this is the leveling guide for the technical
6 solutions consultant ladder, correct?

7 And if we can maybe zoom in a little bit, Mr. Yang.

8 A. Thank you.

9 Q. Do you recognize this document?

10 A. Yes.

11 Q. And I want you to look up in the left-hand corner. You're
12 listed as one of the reviewers, correct?

13 A. I am.

14 Q. OK. If we can go to — and do you recall reviewing this
15 document?

16 A. I do, and it was never fully approved.

17 Q. Let's go to the last page in the document.

18 So it looks like the rewrite process kicked off in
19 October of 2017, correct?

20 A. Yeah, that sounds about right.

21 Q. So up until that point in time, OCTO did not have a
22 leveling guide for technical directors that was specific to
23 OCTO, correct?

24 A. Correct.

25 Q. The version that we're looking at here is as of

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Grannis - Redirect

1 August 2018, thereabouts?

2 A. Yes.

3 MS. GREENE: If we can go back to the first page. I'm
4 sorry, the second page, actually. Third page, my mistake,
5 Mr. Yang.

6 Q. OK. If we can look at the bottom, the L8/principal for
7 technical director solutions consultant, was this written to
8 reflect at that time in 2018 the role and responsibilities for
9 L8 technical solutions consultants?

10 A. Yes.

11 Q. There's no Level 9 on this technical solutions consultant
12 ladder, correct?

13 A. Not on this one, no.

14 Q. Prior to 2018, even though this document didn't exist, did
15 the technical directors in OCTO still need to meet this
16 criteria to be an L8 or above?

17 A. I don't understand how to answer the question because if
18 the document doesn't exist before then, then there's no way
19 that we would be able to use it as a reference for people that
20 were being hired.

21 Q. My question is whether the information reflected in here is
22 — those criterias, even if they weren't written down, were
23 still criterias that you expected the L8 directors to meet as
24 of 2016/2017?

25 A. Well, our job description was really what we expected

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Grannis - Redirect

1 people to meet, and the reason for that is because this
2 document is actually an amalgamation of technical solution
3 consultant inputs from across Google. And at the time when we
4 were creating OCTO, the technical director role was actually
5 very different than what you might find in an L8 or L9
6 technical solutions consultant in another part of Google.

7 We had an organization called gTech, and they were
8 largely like a support organization, and that was very
9 different from what we were trying to do. But because they had
10 a blend of technical skills and also customer management, that
11 was used as a partial foundation. So this document doesn't
12 represent OCTO per se. It only represents kind of a broad
13 technical solutions consultant purview.

14 Q. Wasn't this document in fact edited in 2018 to update it
15 for OCTO?

16 A. No, not just for OCTO, and that's why it was never fully
17 approved. If you look on the first page, this SVP who's in
18 charge of final approval never actually checked the block and
19 never actually approved this. This was published by a person
20 named — I know this document very well because I reviewed it
— Marcelo Peterson, who at the time was an L6, L7 and took it
22 upon himself to try to like amalgamate all the different
23 versions of technical solution consultants — oh, I'm sorry.

24 He was trying to be helpful because this job family
25 was being used in multiple ways across Google, and so just like

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Grannis - Redirect

1 the — it was in a way very similar to the engineering-wide
2 guidance that we talked about earlier in that it was more of a
3 generic document to cover, like, a bunch of different potential
4 flavors of technical solutions consultant, but when it came to
5 interviewing and when it came to the requirements of the job,
6 we used the job description and we used the panel questions.
7 This wasn't used a rubric, for example, for OCTO as a
8 constraining rubric.

9 Q. So your testimony is there has never been a rubric that's
10 been adopted for OCTO?

11 A. No, there is now.

12 Q. OK. When did that go into place?

13 A. I would — I would have to see the date of the document to
14 be very accurate. I would want to be very accurate on that
15 answer.

16 Q. Sometime after 2018, though, correct?

17 A. After 2018, yes.

18 MS. GREENE: Now, if we can go ahead and pull up D38.
19 I wanted to take a look at the top and call out the "People Ops
20 verified," the very top of this document.

21 Q. So this document's for 2020, correct?

22 A. Appears so, yes.

23 Q. And so this is not a document that you would have reviewed
24 in 2016 or 2017, correct?

25 A. Not necessarily. This reference could be that if people

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Grannis - Redirect

were trying to — it's unusual to have a stamp at the top of something like that for — that would say like official documentation for 2020 perf. So this was probably pulled from a file that was used for people going through performance reviews in the year 2020. I can't tell you whether this existed before then or not, but that's why that stamp probably exists at the top.

Q. Mr. Grannis, do you recall giving testimony on Friday that you didn't know what distinguished an L8 from a L9. You were still figuring it out — yes, still figuring it out, and you weren't provided with any sort of leveling guide, correct? And you said there was no leveling guide for that position in engineering?

A. For TSC there was no leveling guide. For OCTO there was no leveling guide at that time, correct.

Q. Let me ask you a very specific yes-or-no question.

A. OK.

Q. Can you say with certainty, sitting here today, that you reviewed an engineering-wide leveling guide at the time you were making your recommendations for leveling the OCTOs?

A. No, I can't with certainty.

Q. Now, you gave some testimony about distinguish — what distinguishes Level 8 from Level 9s. You recall that?

A. Yes.

Q. The questions were related to this document, correct,

NAIHRow1

Grannis - Redirect

1 Mr. Gage showed you this document and asked if it refreshed
2 your recollection about distinctions that existed in 2016 and
3 2017. Do you recall that?

4 A. I don't recall the exact sequence of events, sorry.

5 Q. So when he asked you those questions about distinctions
6 between Level 8 and Level 9 and he used this document to
7 refresh your recollection, were you speaking about distinctions
8 that you knew existed as of 2016 and 2017, or were you just
9 basing it on what you saw in 2020 documents?

10 A. I don't recall exactly what I would have been thinking at
11 the time when I answered that question.

12 Q. Well, you testified last week that you did not compare
13 Ms. Rowe against any other candidates when making leveling
14 recommendations, correct?

15 A. That's correct, the leveling recommendations were provided
16 by four independent processes. So none of those would have
17 been a compare and contrast.

18 Q. So you weren't comparing and contrasting 8 and 9
19 distinctions when you were considering what level to recommend
20 Ms. Rowe for, correct?

21 A. Incorrect. You asked me if I was comparing her to other
22 candidates, and I said no. But I did, and all of the
23 interviewers did, think about leveling, from the recruiter who
24 established the initial leveling hypothesis to the hiring panel
25 who verified or didn't verify it to me who had to look for

NAIHRow1

Grannis - Redirect

1 inconsistencies to the two SVPs who also reviewed for
2 consistency.

3 Q. Sitting here today, do you know what the people before you
4 relied on or looked at or considered when making their leveling
5 recommendations?

6 A. Before me? I don't —

7 Q. The recruiter, the other people that looked at it before it
8 got to you, do you know what they were considering or how
9 they're evaluating things?

10 A. They were using their experience, something which I relied
11 on.

12 Q. And so is it your testimony today that those distinctions
13 between Level 8 and Level 9 that you described after having
14 your memory refreshed by D38 were the things you were
15 considering when leveling Ms. Rowe, is that your testimony here
16 today?

17 A. When we were — when we were looking at Ms. Rowe and where
18 she might be leveled, again, we were focusing on the job
19 description and the extent to which a candidate would be able
20 to do the job and the level of impact that they would have
21 immediately. None of those things are actually in the
22 engineering-wide leveling guidance. Those were all developed
23 as part of developing the OCTO role and then the judgment used
24 by, again, those four different parts of the process.

25 Q. Let's go to your deposition at page 68, line 20, through

NAIHRow1

Grannis - Redirect

1 69, line 18.

2 MR. GAGE: Objection, your Honor. I don't think this
3 is — this is proper use of a deposition.

4 THE COURT: I'm not —

5 MR. GAGE: I know you can't see it.

6 THE COURT: I'm not sure what she's —

7 MS. GREENE: It impeaches the testimony he just gave
8 about what he was considering with respect to leveling
9 Ms. Rowe.

10 MR. GAGE: I disagree that it's inconsistent, your
11 Honor. We can show you the transcript.

12 THE COURT: I need to take a look, because you know
13 the testimony and I don't.

14 MR. CHIARELLO: Your Honor, we have a copy I can hand
15 up.

16 THE COURT: OK. Thank you.

17 THE COURT: What is the citation again?

18 MS. GREENE: Page 68 line 20, through 69:18.

19 THE COURT: 68, line 20 through 69?

20 MS. GREENE: 18.

21 THE COURT: You can use it, Ms. Greene.

22 MS. GREENE: Please go ahead. Thank you, Mr. Yang.

23 (Video played)

24 MS. GREENE: We may pause it because it doesn't seem
25 to be playing, and I'll just read your testimony, if that's OK.

NAIHRow1

Grannis - Redirect

1 "Q. So the question is, what was the basis for your
2 recommendation that she be hired as a Level 8?

3 "A. After reviewing this packet and again trying to, you know,
4 work backwards in time, a couple of things stand out. On the
5 — on the pros, clear industry knowledge; ability to tie use
6 cases, which is the term for, you know, specific type of
7 problem in engineering that needs to be solved and the ability
8 to put that in context in the industry in which she was — had
9 the most experience, which was financial services; and strong
10 communicator, which would likely indicate strong communication
11 skills and strong ability to convey complex ideas to customers.

12 "On the con side, some flags around depth of
13 experience, technical ability, and no clear demonstrated large
14 migration to cloud, although started some preliminary
15 activities at JPMorgan.

16 "So those were all factors I would have considered in
17 the leveling recommendation."

18 That was your testimony, correct?

19 A. Correct.

20 Q. In fact, Mr. Grannis, you can't recall whether you even
21 considered recommending Ms. Rowe for a Level 9, can you?

22 A. I would find it highly unlikely that I did. It was a very
23 consistent packet from the recruiter to the interview panel to
24 my review to the SVPs who reviewed it. No one flagged that it
25 was inconsistent.

NAIHRow1

Grannis - Redirect

1 Q. So at no point did you consider, hey, I should look at her
2 in the context of what a Level 9 looks like and see if she fits
3 within that context? You didn't do that, did you?

4 A. Probably not.

5 Q. Mr. Gage asked you the reasons for why you hired the
6 Level 9 men as Level 9s. Do you recall that?

7 A. Yes.

8 Q. And when Mr. Gage asked you about why you hired Ben Wilson
9 and Jonathan Donaldson as a Level 9, you pointed to the rubric.
10 But to be clear, there was no rubric in OCTO, and you can't say
11 with certainty that you reviewed the engineering leveling guide
12 either, correct?

13 A. We're using different words. So leveling guide,
14 maybe/maybe not; but rubric, absolutely. In fact, the rubric
15 is what you just walked me through in the testimony which gave
16 us factors why Ms. Rowe would be an 8.

17 Q. But your testimony was in the context of those distinctions
18 you'd made between Levels 8 and Level 9 using the engineering
19 leveling guide. That was your testimony on Friday, correct?

20 A. No, it was the rubric as displayed by the job description
21 and the categories of work, which you, I think, refreshed me of
22 while using video on Friday.

23 Q. Let me ask you this while I look: You told Mr. Gage that
24 you hired the men at L9 for the reasons you outlined, but you
25 also said, when I questioned you, that you didn't make the

NAIHRow1

Grannis - Redirect

1 hiring and leveling decisions. You just made recommendations,
2 and you didn't know who made the leveling decision.

3 So which is it, did you make the decision or did
4 somebody else?

5 A. So I provided input. At Google, hiring managers, unlike
6 almost any company I have ever worked in in the past, hiring
7 managers don't have the authority to hire unilaterally. They
8 don't have the authority to level unilaterally. They don't
9 have the authority to determine comp. Managers in this case
10 are really one input into a very long process, the four steps
11 which I've outlined a number of times. So the leveling
12 guidance and the leveling result would have been as a result of
13 those four different steps.

14 Q. Let's talk about performance. You testified on Friday that
15 there was and still is a difference in OCTO in performance
16 expectations between an L8 and L9. Do you remember that
17 testimony?

18 A. That's just not in OCTO, yes, but any organization would
19 have different expectations and between L8 and L9.

20 Q. Back in 2017, can you say with certainty that you
21 communicated to the technical directors at L8 and L9 that they
22 were being held to different performance standards?

23 A. I would never have an occasion to actually have that
24 conversation because when we hold people to expectations in
25 performance, we set their goals independently and individually.

NAIHRow1

Grannis - Redirect

1 Q. So —

2 A. I would never huddle my team together and say: OK, 8s and,
3 OK, 9s, you've got different expectations. This is going
4 harder for you, 9s; it's going to be easier for you, 8s. I
5 never would have had that conversation.

6 Q. In fact, members of their team didn't even know what their
7 levels were, correct?

8 A. That's quite possible.

9 Q. And so if they didn't know what their levels were, how
10 could they have performed to an engineering leveling guide that
11 outlines what they're supposed to be achieving?

12 A. Because they all had managers who were setting expectations
13 based on the knowledge of their levels.

14 Q. Well, you were that manager, correct?

15 A. I was the manager for quite a while for most of OCTO, yes.

16 Q. And did you provide them with anything in writing that
17 explained their performance expectations either at Level 8 or
18 Level 9?

19 A. I gave them all performance expectations, absolutely, and
20 documented repeatedly.

21 Q. Where did you document for them what your performance
22 expectations were for them based on their level?

23 A. It was never — it was never caveated by a level. Imagine
24 how — that would be such a terrible management approach to
25 actually bring somebody in and say: Well, here's your level,

NAIHRow1

Grannis - Redirect

1 and I want to go ahead and have a discussion about your level
2 and all those expectations, because, one, they're brand new. I
3 had more experience than they did. So a lot of what I was
4 trying to do was to coach them and to set expectations that
5 were appropriate for their level, but we would — like, we
6 would never repeatedly talk about levels in performance
7 reviews.

8 Q. I'm talking about the expectations. Did you put anything
9 in writing?

10 A. Expectations are in performance reviews.

11 Q. That's the only place they are, in the performance reviews?

12 A. That's where we set it. So their objectives, they're in
13 black and white, so people know when they're meeting them or
14 not.

15 Q. We looked at Ms. Rowe's performance review, correct, for
16 2017 Q3?

17 A. Yes, we looked at entries from her performance review.

18 MS. GREENE: And let's go ahead and pull that up, if
19 we could. That's Exhibit 126.

20 Q. I just want to ask you a few questions. This is what you
21 would see as the manager, correct, a performance review?

22 A. Yes.

23 Q. And so there may be notes and things on here that are
24 visible to you that are not visible to the employee, correct?

25 A. That's correct.

NAIHRow1

Grannis - Redirect

1 Q. If we can turn to the next page. This is for 2017 Q3. You
2 see in the upper right-hand corner where she received exceeds
3 expectations.

4 If we can go to the next page.

5 Is there anything on this page where you are outlining
6 what your expectations are for her?

7 A. These are results. These aren't the expectations pages.

8 Q. OK. Let's go to the next page.

9 Is there anything on here that outlines what the
10 performance expectations are?

11 A. Again, this is a results page.

12 Q. And your comment under the results page on what she should
13 do really well and should continue doing is "Ulku is excellent
14 at driving authentic thought leadership into one-and-one and
15 one-to-many engagements. She's established herself as the
16 voice of Google's FSI efforts and has uplifted Google's
17 credibility in this vertical considerably."

18 That was what you noted, correct?

19 A. Correct.

20 Q. Who is Leonard Law?

21 A. He was product manager for the financial services vertical.

22 Q. And a product manager is also an engineering role, correct?

23 A. Correct.

24 Q. OK. Let's go to the next page.

25 Anything on here that outlines the performance

NAIHRow1

Grannis - Redirect

1 expectations?

2 A. Again, this is a results page.

3 Q. OK. Let's go to the next page.

4 Anything on here that outlines performance
5 expectations?

6 A. No, this is peer feedback form.

7 Q. OK. If we can go to the next page.

8 Nothing here too, right?

9 A. Right. These are all results forms.

10 Q. OK. If we can go to the next page.

11 This is just starting all over with another version.
12 So was there something in there that outlined the performance
13 expectations?

14 A. Not in the results pages, no.

15 Q. Where would it be?

16 A. It would be in individual expectations developed between
17 each one of the team and myself along the three categories of
18 one to one, one to many, and engineering contributions, and
19 that rubric, you can see it show up in the results page.

20 Q. You had criticism of Ms. Rowe about her work with product
21 managing and engineering collaboration, correct?

22 A. Correct, it was an opportunity for improvement.

23 Q. Other technical directors at Level 9 struggled to gain
24 traction with engineering teams too, correct?

25 A. Correct.

NAIHRow1

Grannis - Redirect

1 Q. That wasn't unique to Ms. Rowe, correct?

2 A. It's difficult for all of the team all the time.

3 Q. And you had other performance criticisms of the L9 men too,
4 correct?

5 A. I did.

6 Q. I want you to look at P87 now.

7 MR. GAGE: I'm sorry, what was it again?

8 MS. GREENE: P87.

9 Q. Now, these are the calibration notes from the Q3 2017
10 performance cycle. They're maintained by Melissa Lawrence.
11 Was she your HR person at that time?

12 A. She was.

13 Q. And there was a calibration meeting in which you
14 participated where your direct reports were discussed?

15 A. Yes. We always had calibration meetings to discuss direct
16 reports.

17 Q. At the top it outlines a percentage, 60 percent one-to-one,
18 10 percent one-to-many, 30 percent product/eng collaboration.
19 Was that the weighting given to these three pillars?

20 A. Yes, that was the rubric we were describing earlier.

21 MS. GREENE: OK. If we can go to the third page and
22 call out the comments for Ms. Rowe at the top.

23 Q. You wrote: "Model for sales team. Mentor and coach to
24 Leonard Law. Fantastic hire. Can move fluidly between tech
25 and business for FS. Regulatory work pushes over to exceed."

1 NAIHRow1

Grannis - Redirect

1 Sincere thought leader. More of a known quality to PM and Eng.
2 Understands platform level."

3 Those were your notes with respect to Ms. Rowe during
4 that time period, correct?

5 A. It might have been mine, but the calibration session
6 doesn't just include me. So it could have been a number of
7 people providing that input.

8 Q. That was the feedback for Ms. Rowe that was captured,
9 correct?

10 A. That's what was in the document, yes.

11 (Continued on next page)

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NAIVROW2

Grannis - Redirect

1 MS. GREENE: Okay. Let's go to the second page. If
2 we can look and call out the section that begins with Paul and
3 goes to Ben and goes to Paul. Up a little bit further,
4 Mr. Yang. Beginning with Ben's and going down to Paul's.

5 Q. These are four of the Level 9s in OCTO; correct?

6 A. Yes.

7 Q. And so there's feedback there for Ben where he needs to dig
8 in and have more impact and that he's the least technical;
9 correct?

10 A. Correct.

11 Q. And Mr. Evren, Mr. Eryurek, needs to focus more on his CTO
12 persona; correct?

13 A. Correct.

14 Q. Jonathan was changed from exceeds expectation to
15 consistently meets; correct?

16 A. Appears so.

17 Q. And that's because he was not as active on a one-on-one?

18 A. I can't speak to if that was the factor or not, but
19 possibly.

20 Q. Feedback from Mr. -- for Paul, could he identify a passion
21 point, end point to focus on. That was the end; correct?

22 A. Correct.

23 MS. GREENE: Now, we can take that down, thank you.

24 Q. I'm going to go back to Ms. Rowe's performance evaluation.

25 You saw all of the comments that others gave about

NAIVROW2

Grannis - Redirect

1 Ms. Rowe; correct?

2 A. You mean like the feedback from that prior form?

3 Q. Yes.

4 A. Yes.

5 Q. And so that influenced your impression of Ms. Rowe's
6 performance?

7 A. Certainly I would have taken it into account. Peer
8 feedbacks are a critical part of the process.

9 MS. GREENE: So let's go to page 18 of document 126.

10 I'm sorry, page 16. And if we can call out the feedback on the
11 bottom part of that document, just beginning with Ulku Rowe.

12 I'm sorry, that whole section there, Mr. Yang.

13 Q. This is feedback from peers and yourself with respect to
14 Ms. Rowe for the Q 2018 -- Q1 2018 cycle; correct?

15 A. I think so. The highlighted section is -- I can't see the
16 date, but I'll take your word for it.

17 Q. You know that Ulku was one of Cloud's most credible and
18 authentic representatives of the market; correct?

19 A. Correct.

20 Q. Okay. Let's go on to page 37.

21 Now, this is from 2019 Q1, where she also received
22 exceeds expectations; correct?

23 A. It's not on this page, but probably. I think she's had
24 that every time.

25 Q. Okay.

NAIVROW2

Grannis - Redirect

1 MS. GREENE: Can we pull out the comments beginning
2 with Albert Sanders and going through Xabier.

3 Q. So Mr. Sanders notes that she's a subject matter expert on
4 whom the Cloud public policy team relies for engagement. She's
5 a critical partner. She effectively leveraged her industry
6 relationships and substitute expertise to not just unlock sales
7 opportunity, but also influence the broader environment. And
8 that will pay dividends for the business going forward.

9 That's what Mr. Sanders said; correct?

10 A. Correct.

11 Q. If we look at Ms. Kibria. Ulku can communicate difficult
12 concepts simply. In that way she is a unicorn to those of us
13 in the policy world who need to help regulators and
14 policymakers understand issues that are far outside what they
15 know. And then she gives some examples; correct?

16 A. Correct.

17 Q. Ed Morris said: She's an ambassador for Google Cloud to
18 the financial services industry; correct?

19 A. Correct.

20 Q. Let's look at Leonard Law's comments. He writes that she's
21 an incredible asset to the team that marries deep technical
22 expertise industry experience and Googliness, not easy to find
23 in financial services, into a single package. The result is an
24 incredible Googler who is equally comfortable talking about
25 marquee customers up to C-level with regulators, public

NAIVROW2

Grannis - Redirect

1 officials. And, of course, internally she simultaneously
2 conveys a vision of innovation, business transformation with
3 our customers, but keeps it balanced against the critical core
4 requirements that we have internally to fulfill our
5 aspirations. She is a delight to work with and an inspiration
6 for our customers.

7 You would agree that's glowing feedback; correct?

8 A. Yeah, that's very nice feedback.

9 MS. GREENE: Let's look at page 71. And if we can
10 pull out the feedback starting with Will Grannis, and going
11 back to Rumesh Vemuri.

12 Q. You write: Ulku is maybe the most effective Google
13 spokesperson to the financial services industry.

14 And that bolding "the most effective," that was your
15 bolding; correct?

16 A. It was.

17 Q. Including all critical constituencies, customers, partners,
18 press, media, regulators, governments. The demand she gets for
19 her time in this capacity is overwhelming and speaks directly
20 to her credibility and acumen, blend of technical and business.

21 That was your feedback; correct?

22 A. Correct.

23 Q. Ms. Wilson's feedback is glowing as well; correct?

24 A. Let me read it.

25 Yes, it's also very positive.

NAIVROW2

Grannis - Redirect

1 Q. Let's look at Mr. Bhat's. He says: It's incredibly
2 difficult to bring deep industry knowledge blended with
3 technical depth and focus on business outcomes. Ulku makes it
4 look easy. She has played a critical role for multiple key
5 North American financial services accounts, not only providing
6 thought leadership externally, but taking the time to follow
7 through with the internal teams and deliver on the vision.

8 Recently, she helped the Goldman Sachs team plan and
9 execute on an executive briefing that led to the start of a
10 partnership to build a consolidated transaction ledger on
11 Google Cloud, first of its kind for financial services. While
12 most could have stopped there, Ulku has continued to engage
13 with the team, bringing in a wealth of company-wide resources
14 to the table in effort to help a successful deployment. She is
15 a true asset to the OCTO team and is highly valued by mine.

16 Again, that's glowing; correct?

17 A. That's very positive, yes.

18 Q. And let's look at the final, Ms. Vemuri's or Mr. Vemuri's
19 testimony: Ulku has been a fantastic partner on Deutsche Bank.
20 Ulku engaged while the train was fully in motion; and after the
21 departure of Tais O'Dwyer, with no questions asked, Ulku took
22 control of the co-development work stream and used her
23 expertise to drive the cash flow forecasting asset as a service
24 use cases. These were critical to building further trust with
25 Deutsche Bank. Not only did she find the functional and

NAIVROW2

Grannis - Redirect

1 technical use cases, she also took ownership of the trust with
2 the customer Paul Maley. Fantastic work.

3 And if we go to the next page and go down to your
4 comment. One of the things you said was that there were
5 promising emerging themes and collaborative innovation
6 opportunities for increasing impact with engineering; correct?

7 A. Correct.

8 MS. GREENE: Let's look finally at 22, page 91. And
9 if we can pull out that bottom section.

10 Q. You again have positive feedback for Ms. Rowe; correct?

11 A. Correct.

12 Q. And Behnaz Kibria says: Ulku continues to be, in my
13 estimation, the single best representative for Google in the
14 financial services regulatory space. Regulators ask for her by
15 name, including FINRA, usually an evangelist for AWS, extending
16 an invitation for Google to participate in a Cloud conference
17 in New York City.

18 I've had similar experiences with IIF, AIR, and an
19 alphabet soup of institutions, agencies, and policymakers who
20 find her relatable, accessible, but undeniably brilliant in
21 explaining technology issues. Kudos to Ulku for carrying
22 forward this critical work.

23 That was his testimony; correct?

24 A. Her testimony, but yes.

25 Q. Her.

NAIVROW2

Grannis - Recross

1 Now, digital fragmentation, was that an engineering
2 project?

3 A. It was envisioned to be, but it was never adopted by
4 engineering.

5 Q. And what about the multi-cloud working group, did that
6 relate to engineering?

7 A. That did relate to product strategy, yes.

8 MS. GREENE: Okay. Let's turn to the next page, if we
9 can. Look down at the bottom and call out Paul Strong's
10 comments.

11 Q. Paul wrote: Ulku brings great insight and perspective to
12 our work together on the digital fragmentation emerging theme
13 and the multi-cloud working group. Her contributions on
14 multi-cloud have been particularly helpful balancing our
15 tendency to look at it from an operational perspective with
16 that of the developer.

17 That was Mr. Strong, the L9's feedback for her in
18 2022; correct?

19 A. I don't have the date on here, but if you say it's 2022,
20 then I believe you.

21 MS. GREENE: No further questions.

22 MR. GAGE: Just a few questions, your Honor.

23 RECROSS EXAMINATION

24 BY MR. GAGE:

25 Q. Mr. Grannis, earlier this morning when we first got

NAIVROW2

Grannis - Recross

1 started, Ms. Greene asked you some questions about the TSC
2 leveling guide, and then she showed a part of your deposition
3 transcript, remember that?

4 A. Yes.

5 Q. And do you remember saying to her that she asked you
6 another question right before that in your deposition?

7 A. Yes.

8 MR. GAGE: Your Honor, could we play the full portion
9 of that? If Mr. Yang could play page 48, line 10, through line
10 19. I could read it, your Honor, and make this quicker, if
11 you'd prefer.

12 (Video played)

13 BY MR. GAGE:

14 Q. Mr. Grannis, could you explain to the ladies and gentlemen
15 of the jury why you referred to your earlier answer in the
16 deposition as an explanation for what was not an inconsistency?

17 A. Because of the frame of mind was it was for TSC for OCTO
18 specifically, you know, was there any guide, was there any
19 leveling guide, and there wasn't. But there was an engineering
20 guide.

21 Q. Okay. Next question.

22 Ms. Greene also asked you about a document,
23 Defendant's Exhibit 38, the engineering-wide leveling guide.
24 Do you remember those questions?

25 A. Yes.

NAIVROW2

Grannis - Recross

1 Q. And do you remember she asked you whether you could say
2 with certainty whether six or seven years ago you reviewed that
3 engineering leveling guide when you were leveling the technical
4 directors, and you said no, you could not say with certainty
5 that you did?

6 At the time you were making those leveling
7 assessments, were you generally familiar with the engineering
8 leveling guide?

9 A. Yes.

10 MS. GREENE: Objection.

11 THE COURT: Overruled.

12 A. Yes.

13 MR. GAGE: I'd like the witness to take a look at
14 P-87.

15 Q. This was the document that counsel just had up. Remember
16 Ms. Greene asked you some questions about the calibration
17 notes.

18 A. Yes.

19 Q. Could you explain to the ladies and gentlemen of the jury
20 what the reference at the top is to 60 percent one to one, ten
21 percent one to many, and 30 percent product Eng collab?

22 A. Yeah. So think about the role as having 100 percent would
23 be like all the things you're expected to do in the role. And
24 what we really wanted to do is you want to emphasize certain
25 areas more than others.

NAIVROW2

Grannis - Recross

1 So 60 percent one to one means 60 percent, roughly, of
2 the role would have been engaging directly with customers,
3 getting them to consider Google Cloud.

4 One to many ten percent of the role, a small part of
5 the role, but an important part, so we designated it, was one
6 to many. So this would have been forums, like external
7 speaking engagements, working with broad audiences, anything
8 that wasn't just limited to one customer. Think of this as
9 like broadly evangelism.

10 And then the 30 percent product and Eng collaboration,
11 we really wanted to make sure -- three times more at this point
12 than one to many, it was really important for us to make sure
13 that we were making a lasting impact on the engineering
14 roadmap, because we're a product company. So advancing the
15 product roadmap was really, really important to us. So that's
16 why that was rated at 30 percent.

17 Q. There's no date on this document, is there? There's no
18 year on the document?

19 A. There is no year on the document.

20 Q. Did those percentages change over time?

21 A. They did.

22 Q. How?

23 A. Well, because at this point in time, we had -- this is
24 what --

25 Q. Not dated.

NAIVROW2

Grannis - Recross

1 A. Yeah. So between 2016/2017, when we first started the
2 office of OCTO, we had what I would call a broader kind of
3 responsibilities across customer impact areas. Because there
4 weren't any other senior technical people that were also really
5 good customers; we didn't have, like, a big business
6 development staff or the rest. So that's why that number was
7 so high, 60 percent one to one, because we needed to cover
8 ground for the sales team and the go-to-market team, because
9 they didn't have senior people that had technical skills at the
10 time.

11 Today, those ratios look very different. In fact,
12 it's roughly 70 percent engineering today; because over time,
13 the sales team has hired really, really senior people who have
14 technical expertise, and our business developers are now much
15 more senior and more technical. So our niche, kind of as it
16 was envisioned in the beginning, but we had to cover these
17 other areas, the niche that we really cover is really, really
18 in-depth engineering nuanced understanding and guidance for the
19 CEO, for our product teams, and then actually embedding our
20 projects into the product roadmap.

21 Q. Just a couple more questions on this P-87.

22 It's unclear whose comments are reflected in the
23 document, is that fair to say?

24 A. Yes. And calibration is a multi -- there are multiple
25 people in calibration sessions, so there is no attribution to

NAIVROW2

Grannis - Recross

1 who said what by design, to protect and be able to have an
2 objective set of inputs from a wide variety of people.

3 Q. And so the notes that Ms. Greene was reading from were not
4 necessarily things you said; is that correct?

5 A. Correct.

6 MR. GAGE: We can take this down.

7 Q. Just a few more questions.

8 You were asked a number of questions about feedback
9 contained in Ms. Rowe's performance review.

10 Did you always give Ms. Rowe credit for her
11 communications abilities?

12 A. Absolutely.

13 Q. And the comments that Ms. Greene read from repeatedly were
14 mostly from people in marketing, communication, and sales; is
15 that correct?

16 A. Yes. Of all the people she listed, only one was a product
17 manager.

18 Q. And were any of those comments that Ms. Greene read
19 comments concerning Ms. Rowe's engineering contributions in
20 OCTO?

21 A. There were a few that were laterally. So some of the
22 description around projects like a multi-cloud forum, which
23 would have been like an internal brainstorming group. There
24 was also feedback from Leonard Law, who was in the financial
25 product area at the time back in 2017, so this is a while ago.

NAIVROW2

Grannis - Recross

1 But there were no -- there's no feedback from
2 directors of engineering, VPs of engineering, directors of
3 product management, VPs of product management. And those would
4 have been more of our peers.

5 Q. Okay. Now, would it be fair to say that Ms. Rowe's success
6 in communications is a primary reason why she received a three
7 out of five and exceeds expectations?

8 A. Yeah. I mean, I just -- I guess the rough math would be if
9 60 percent was sales and 10 percent was, you know, broad
10 marketing events, that's about 70 percent of the job. And so a
11 three out of five is roughly about a 70 percent or even could
12 have been even a little lower, but was definitely given credit
13 for the impact that she was having in those two categories.

14 Q. To the best of your recollection, since Ms. Rowe has been
15 at Google, has she received steady increases in her
16 compensation over time?

17 A. I would have to look at it, but probably. Exceeds
18 expectations generally leads to a small incremental improvement
19 over time.

20 Q. Just one last question. Ms. Greene asked you about a
21 comment in the performance review where you referenced some
22 promising emerging themes that Ms. Rowe was working on. Do you
23 remember that?

24 A. Yes.

25 Q. Did Ms. Rowe ever follow through on those projects?

NAIVROW2

Harteau - Direct

1 A. No. In fact, both those projects never really went
2 anywhere.

3 MR. GAGE: No further questions, your Honor.

4 MS. GREENE: None from me, your Honor.

5 THE COURT: Okay. Mr. Grannis, you're excused.

6 THE WITNESS: Thank you.

7 (Witness excused)

8 MR. CHIARELLO: Your Honor, may we bring in the next
9 witness?

10 THE COURT: Oh, yes. I thought you were doing that.

11 MR. CHIARELLO: Our next witness is Nicholas Harteau.

12 THE COURT: Yes. Thank you.

13 NICHOLAS HARTEAU,

14 called as a witness by the Plaintiff,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. CHIARELLO:

18 Q. Good morning, Mr. Harteau.

19 A. Good morning.

20 Q. Do you know the plaintiff in this case, Ulku Rowe?

21 A. I do.

22 Q. And how do you know her?

23 A. She and I worked together at Google for a time.

24 Q. And when you worked together, were you both in Google's New
25 York City office?

NAIVROW2

Harteau - Direct

1 A. We were, yes.

2 Q. Mr. Harteau, were you subpoenaed to testify here today?

3 A. I was, yes.

4 Q. And you've previously submitted a sworn statement in this
5 case; is that correct?

6 A. That is correct.

7 Q. Before we talk about Google, I just want to talk briefly
8 about your experience prior to Google.

9 You were employed at Spotify before you joined Google;
10 is that correct?

11 A. Yeah, that's correct.

12 Q. Approximately how many years were you employed there?

13 A. I believe about six years.

14 Q. And at Spotify, you had an opportunity to work with some
15 folks at Google; is that right?

16 A. I did, yes.

17 Q. Was Brian Stevens somebody that you worked with?

18 A. Yes. We met. I wouldn't say we did a lot of work
19 together, but we certainly met.

20 Q. When you were at Spotify, what title did you have?

21 A. Vice president of engineering.

22 Q. And to whom did you report?

23 A. The CTO, Oskar Stal.

24 Q. Were you responsible for managing employees while you were
25 there?

NAIVROW2

Harteau - Direct

1 A. I was.

2 Q. And just approximately how many employees were you
3 responsible for?

4 A. At peak, probably around 300.

5 Q. Now, is it correct you were hired as a technical director
6 in the office of the CTO at Google?

7 A. Yeah, that's correct.

8 Q. Was that a director level role within Google?

9 A. That's my understanding, yeah.

10 Q. And when were you hired?

11 A. Sorry. I'm bad with dates, but let me do a little math.

12 It would have been six years ago, six plus years ago.
13 So that would be 2017?

14 Q. If I said April of 2017, would that sound correct?

15 A. That sounds correct to me.

16 Q. And did you start immediately?

17 A. I took -- I had intended to take some time off after
18 leaving Spotify. And Google preferred that I start my
19 employment at Google and then take a leave of absence. So I
20 think I started technically and then took about three months
21 off work.

22 Q. Okay. Now, the compensation package, the hiring package
23 that Google gave you, did it include any payments or equity to
24 account for compensation you were forfeiting by joining Google?

25 A. I can't say if it was directly compensating for equity, but

NAIVROW2

Harteau - Direct

1 certainly there was a big equity portion of my compensation.

2 Q. And did you understand that any of the compensation you
3 received was to offset anything you might be losing by leaving
4 Spotify and joining Google?

5 A. I would maybe put it a little bit differently. Like,
6 Google needed to make a competitive offer that was comparable
7 with my compensation and opportunity at Spotify, and they put
8 together a comparable offer.

9 Q. Okay. Now, am I correct that you didn't spend your entire
10 career at Google in OCTO?

11 A. That's correct.

12 Q. And around September of 2018, you moved into a different
13 role in software engineering; is that right?

14 A. I couldn't speak to that date, but that sounds about right.
15 But yes, I moved from the office of the CTO into managing an
16 engineering team at Google.

17 Q. And you left Google in May of 2020 or thereabouts?

18 A. That sounds right to me.

19 Q. Okay. Feel free to correct me. I'm just trying to move
20 through this bit of your background.

21 A. I trust your notes.

22 Q. Now, when you joined Google, did Google assign you a level?

23 A. They did. I think they assign all incoming employees a
24 level.

25 Q. What level was that?

NAIVROW2

Harteau - Direct

1 A. Level 9.

2 Q. When did you learn that you had been leveled as a Level 9?

3 A. I don't recall specifically, but I'm sure that it came up
4 in the hiring process.

5 Q. Now, did Google's decision to level you as a Level 9 in any
6 way impact your decision to accept the offer at Google?

7 A. I wouldn't say so. You know, going into Google, I didn't
8 really have an appreciation for the criticality or weight
9 placed on levels; that was just a piece of information that was
10 part of being hired.

11 Q. If you had been told you would have been brought in as a
12 Level 8, would you still accept the job?

13 A. I suspect I would have, but it's hard to say in retrospect.

14 Q. Did anyone at Google explain to you why you had been
15 leveled as a Level 9?

16 A. I don't remember any specific conversation about that.

17 Q. Let's talk a little bit about the technical director role
18 itself. What were the responsibilities of a technical director
19 in OCTO?

20 A. So folks in the office of the CTO, we sort of split our
21 time in a couple of ways, one of which was representing Google
22 publicly. So that would be speaking at conferences, that would be
23 be engaging with key customers and prospects, that would be
24 sort of outbound communication. Some of that was -- another
25 category of work was working internally within Google, like

NAIVROW2

Harteau - Direct

1 within -- with Google engineering teams to try to bring more
2 of, like, a customer focus and empathy for customers to those
3 teams, like really be the conduit of what they need and to
4 those engineering teams.

5 Q. And was there also a component that related to work with
6 customers?

7 A. Yeah. I had lumped that in with outbound work; but yes,
8 engaging directly with key customers and key prospects to
9 troubleshoot their Cloud experience in various ways.

10 Q. Have you ever heard the work you described, meaning the
11 general description of your work described as three pillars or
12 three pillars used in association with that?

13 A. Yes. Absolutely.

14 Q. Now, during your time as a technical director in OCTO, did
15 you have occasion to collaborate with other technical
16 directors?

17 A. Occasionally.

18 Q. And did that include Ms. Rowe?

19 A. I don't think Ulku and I ever directly worked with each
20 other on a project.

21 Q. In terms of your collaboration with other technical
22 directors, how did that take place?

23 A. Yeah, I'm not sure if there's a general statement to be
24 made there. But, you know, as an example, there were folks
25 that we hired into OCTO where we both worked together on a

NAIVROW2

Harteau - Direct

1 specific customer. I remember working with one of the other
2 office of the CTO members on Fitbit, for example. And, you
3 know, we both brought different perspectives and strengths to
4 the conversation, but it was a collaboration.

5 Q. And did technical directors within OCTO ever cover for each
6 other on other customer accounts?

7 A. I'm sure we did in the course of normal stuff, business.

8 Q. And technical directors had group meetings together?

9 A. We did. I mean, we operated as a team. We had normal team
10 meetings, we reported status on our projects, we talked about,
11 you know, what was next in the queue, what the opportunities
12 were.

13 Q. Mr. Harteau, is it correct that in August of 2018, you
14 started to manage a small team of technical directors within
15 OCTO?

16 A. I couldn't speak to that specific date, but I did
17 transition into leading a team within OCTO.

18 Q. And that was a group of around four to six technical
19 directors?

20 A. It was a group of around four to six people. Some were
21 technical directors, others had different roles and
22 classifications within Google.

23 Q. Was Brian Steikes one of those technical directors?

24 A. I believe Brian Steikes was one, yes.

25 Q. And were you still performing your other technical director

NAIVROW2

Harteau - Direct

1 functions, the three pillars we talked about while you were
2 managing that group?

3 A. I was, yes.

4 Q. Mr. Harteau, who were the other director-level technical
5 directors working in OCTO when you joined?

6 A. I'm not sure I can produce an accurate list, but I
7 certainly remember working with Ben Wilson, Evren, Jonathan
8 Donaldson, and Ulku was there when I joined, as I remember.

9 Q. And the individuals that you recall, did you know what
10 their level was?

11 A. I didn't.

12 Q. Did you have any belief as to what their level was?

13 MS. TOMEZSKO: Objection. Relevance.

14 THE COURT: Sustained.

15 Q. Well, did you know one way or the other what level they
16 were, whether Level 8 or Level 9?

17 MS. TOMEZSKO: Objection. Asked and answered.

18 THE COURT: I'll allow it.

19 A. I honestly don't recall. In Google culture, like, there is
20 a lot of discussion of levels. And I wouldn't -- it wouldn't
21 surprise me that I learned that over the course of the water
22 cooler conversation. But I don't have any specific memory of
23 that now.

24 Q. Okay. Let's talk about Ms. Rowe a little bit.

25 Did you and Ms. Rowe have occasion to work together in

NAIVROW2

Harteau - Direct

1 any capacity?

2 A. I don't think we worked together directly. The places
3 where I remember spending time with Ulku were there were
4 conferences that we both attended and spoke out and normal team
5 collaboration. You know, we went to the same meetings, we
6 talked about the same stuff.

7 I think Ulku and I probably talked a little bit more
8 than some of the other folks, as we were the two -- two folks
9 stationed in New York City.

10 Q. And did you have an opportunity to observe the work that
11 she did separate from that?

12 A. I would say I observed some of her work. I don't think it
13 was exhaustive, but certainly some.

14 Q. From what you were able to observe on a day-to-day basis,
15 how did her work compare with yours?

16 A. Similar. You know, we were doing the same sort of work in
17 the same sort of circumstances.

18 Q. You and Ms. Rowe both worked with customers?

19 A. Correct.

20 Q. And you and Ms. Rowe both worked with engineering and
21 project management teams?

22 A. Correct.

23 Q. And both of you engaged in thought leadership on behalf of
24 Google?

25 A. Correct.

NAIVROW2

Harteau - Direct

1 Q. Both of you did public speaking?

2 A. Yes.

3 Q. Based on your interactions and your observations of
4 Ms. Rowe, how knowledgeable was she with respect to Cloud and
5 its relationship to financial services?

6 A. She seemed quite knowledgeable. I am not an expert in that
7 myself, so, you know, I wouldn't be the authority on that. But
8 she seemed as knowledgeable as the rest of us were and our
9 specialties.

10 Q. Mr. Harteau, part of the technical director role was to
11 work with and gain support from the engineering teams; is that
12 correct?

13 A. That's correct.

14 Q. And in your observation, how successful were the technical
15 directors with whom you worked in getting the engineering teams
16 invested in their projects?

17 A. I think that was one of the harder parts of the job. And I
18 think we all struggled with that -- that aspect of it.

19 Q. Would you say that's a struggle that all the technical
20 directors shared?

21 MS. TOMEZSKO: Objection. Foundation.

22 THE COURT: Can you rephrase please.

23 Q. In your observation, was that an issue that all the
24 technical directors you observed had?

25 A. Can you ask that again? Sorry.

NAIVROW2

Harteau - Direct

1 Q. Among the technical directors with whom you worked, was
2 there anyone that did not struggle to gain traction with the
3 engineering teams?

4 A. In my observation, I think we -- you know, we all struggled
5 with that at various times. You know, it was -- it was a tough
6 part of the job.

7 Q. Did you have a good working relationship with Ms. Rowe?

8 A. I did.

9 Q. Did she treat you with respect?

10 A. She did.

11 Q. Did she ever talk down to you?

12 A. Not at all.

13 Q. Did you ever find her to be abrasive?

14 A. No.

15 Q. Ever find her to be cantankerous?

16 A. No. That might be one cantankerous person to another, but
17 no.

18 Q. Ever find her to be bristly?

19 A. No.

20 Q. How about egocentric?

21 A. No.

22 Q. From your vantage, from your observation, how did Ms. Rowe
23 treat others within OCTO?

24 A. Like colleagues, like peers, with respect.

25 Q. While you were at Google, Mr. Harteau, did you know what

NAIVROW2

Harteau - Cross

1 Ms. Rowe's level was?

2 A. Not to my recollection.

3 Q. While you were working with her, did you have an assumption
4 about what her level was?

5 MS. TOMEZSKO: Objection.

6 THE COURT: Sustained.

7 Q. Did you at some point learn what Ms. Rowe's level was?

8 A. I did.

9 Q. When did you learn that?

10 A. I believe when I -- when I gave the written statement.

11 Q. And that was in connection with this lawsuit; correct?

12 A. Correct.

13 Q. What was your reaction upon learning that Ms. Rowe was a
14 Level 8?

15 MS. TOMEZSKO: Objection.

16 THE COURT: Sustained.

17 MR. CHIARELLO: Nothing further.

18 CROSS-EXAMINATION

19 BY MS. TOMEZSKO:

20 Q. Good morning, Mr. Harteau.

21 A. Good morning.

22 Q. You were asked at the beginning of your testimony whether
23 you were subpoenaed to appear here today. Do you recall that?

24 A. I do.

25 Q. Who subpoenaed you, if you know?

NAIVROW2

Harteau - Cross

1 A. I don't.

2 Q. Okay. Are you aware whether Google was the one who issued
3 you a subpoena?

4 A. I think you're asking about mechanisms of the court that I
5 don't fully understand. I got a subpoena; I showed up.

6 Q. Totally fair.

7 Now, the declaration, the statement that you had
8 referenced earlier, who drafted that declaration?

9 A. That was -- so when I was asked for the statement, I
10 engaged counsel and asked my counsel to work -- work with
11 Ms. Rowe's counsel on a statement.

12 Q. Did you, yourself, set pen to paper and draft that
13 declaration?

14 A. I don't recall. Probably not. I think I got a draft.

15 Q. Now, I'd just like to talk about your pre-Google background
16 for a little bit.

17 I think you had testified that you worked at Spotify
18 prior to coming to Google; is that right?

19 A. Yeah, that's correct.

20 Q. Prior to that, would it be fair to say that you've held a
21 series of engineering leadership roles since about 1998?

22 A. That sounds correct.

23 Q. I'd like to actually take a look at your resume, if we can,
24 and that is Plaintiff's 118.

25 MS. TOMEZSKO: If you could pull that up, please,

NAIVROW2

Harteau - Cross

1 Jean. Go ahead. Okay. Here we go.

2 Q. Mr. Harteau, do you recognize this document?

3 A. Yeah, that looks -- looks like my resume.

4 Q. Would you like to see the second page of it just to be
5 sure? I want you to make sure --

6 A. No, no, that's fine.

7 Q. Okay. Now, are you aware if this is the resume that you
8 had submitted to Google in connection with your candidacy for
9 the technical director role in OCTO?

10 A. I was not aware, but makes sense to me.

11 Q. Does this look like your resume from approximately the time
12 that you were speaking with Google about joining in the OCTO
13 role?

14 A. It does, yes.

15 Q. I'd like to just quickly look at the "About Me" section at
16 the top here. I'll make it a little bit bigger for you -- or,
17 rather, Jean will.

18 MS. TOMEZSKO: Thank you, Jean.

19 Q. Now, here in the second sentence it says: I have
20 successfully led through periods of hyper-growth, critical
21 pivots, and cultural change. Do you see that?

22 A. I do. I do.

23 Q. I'm sorry, I couldn't hear you.

24 A. Sorry.

25 Q. No problem.

NAIVROW2

Harteau - Cross

1 Are there examples in your resume that you could point
2 to where you've led a company through a period of hyper-growth,
3 critical pivots, or cultural change?

4 A. Sure. I mean, I think the most relevant experience there
5 is from Spotify. You know, I joined at a time when Spotify was
6 quite -- quite young; it had just launched in the U.S. and was
7 beginning to both grow in the U.S. and, like, do a global
8 expansion. And, you know, I owned some parts of the platform
9 that were pretty key to that effort, and we really had a lot of
10 work to do to scale that up.

11 Q. Is Spotify the only instance in your resume where you
12 demonstrated success leading a company through periods of
13 hyper-growth?

14 A. Interesting. I think there are -- there's probably one
15 other example. I worked at an internet service provider for a
16 while that, you know, there was a big boom-and-bust cycle in
17 the ISP industry. This was in the days of, like, DSL versus
18 cable modems versus dial-up, for those of us that are old
19 enough to remember. But we did a lot of big expansion there
20 and a lot of big contraction actually, so --

21 Q. Did you lead that project? I think that was at CoreComm,
22 do I have that right?

23 A. That's correct. I led an aspect of that project. But
24 certainly there were aspects of both skill in the platform and
25 skill in the team.

NAIVROW2

Harteau - Cross

1 Q. Now, focusing on your experience at Spotify, I just want to
2 look at that portion of your resume. And if you look at the
3 bottom of the second paragraph here, it says: Currently I'm
4 spearheading a move of Spotify's service back end and data
5 platform from on-premises data centers into Google Cloud
6 Platform, which you can learn about here and here.

7 Do you see that?

8 A. I do.

9 Q. The "here and here" appear underlined. Are those
10 hyperlinks out to external documents, if you recall?

11 A. I don't recall. I would be very curious to see where those
12 links lead. I haven't looked at this document in a long time.

13 Q. Were there articles that existed, articles and blog posts
14 where you describe Spotify's work migrating to the Google Cloud
15 Platform while you were there?

16 A. There were, yes.

17 Q. Would it be fair to assume whether the "here" and the
18 "here" that you see hyperlinked there might have linked to one
19 of those publicly available articles?

20 A. It would be fair to assume.

21 Q. Now, were you heavily involved in the decision to choose
22 Google Cloud Platform over other service providers while you
23 were at Spotify?

24 A. I was. I was not the decision-maker, but I certainly
25 prepared the recommendation.

NAIVROW2

Harteau - Cross

1 Q. Was your recommendation given any significant weight?

2 A. I think it was the primary weight.

3 Q. And now at the time, Google Cloud was a relative newcomer
4 to the cloud computing space; is that right?

5 A. Relatively, yes.

6 Q. And Spotify was one of the first companies to really go all
7 in on the enterprise adoption of Google Cloud Platform at the
8 time, is that fair?

9 A. Could you state that again?

10 Q. Sure. At the time when you were at Spotify, was Spotify
11 one of the first companies to go all in on a full-scale
12 enterprise adoption of Google Cloud Platform?

13 A. It was certainly part of a small group of early adopters.

14 Q. Okay. So Spotify was among that small group?

15 A. Spotify was among that small group, yes.

16 THE COURT: Ms. Tomezsko, excuse me. In about ten
17 minutes I'm going to give the jury a break.

18 MS. TOMEZSKO: Thank you, your Honor. I will try, if
19 I can, to wrap it before that the best I can.

20 Q. So I think we said that Spotify was among the small group
21 of early adopters, right?

22 A. Correct.

23 Q. You were leading the efforts - or rather spearheading the
24 move of Spotify to the cloud?

25 A. Yes, I think that's -- I think that's accurate.

NAIVROW2

Harteau - Cross

1 Q. Now, in your opinion, would that make you one of a small
2 number of senior technical leaders who had actually worked on
3 an enterprise migration of a company to Google Cloud Platform
4 at the time?

5 A. Yes.

6 Q. I think earlier you said that during your time at Spotify,
7 you had an occasion to interact with Brian Stevens; is that
8 correct?

9 A. I did, yes.

10 Q. Okay. Brian Stevens is the chief technology officer of
11 Google Cloud?

12 A. I believe he was at the time.

13 Q. Did you, while you were still at Spotify, actually
14 participate in Google Cloud's annual conference with Brian
15 Stevens to speak about the partnership between Google Cloud
16 Platform and Spotify?

17 A. I did, yes.

18 Q. Now, at some point you left Spotify to join Google Cloud in
19 the office of CTO; correct?

20 A. Correct.

21 Q. And if I refer to OCTO, can we agree that that's the office
22 of the CTO at Google?

23 A. Absolutely.

24 Q. Okay. Because of your work at Spotify with the Google
25 Cloud Platform, by the time you joined OCTO, were you familiar

NAIVROW2

Harteau - Cross

1 with some of the flagship products that Google offers, such as
2 BigQuery?

3 A. Yes, I was quite familiar with the platform.

4 Q. I'd like to look at one of your early performance reviews
5 at Google.

6 MS. TOMEZSKO: Let's pull up P-125, Jean, please.

7 Q. Mr. Harteau, do you recognize this as your first quarter
8 2018 performance review? If I could help you out, the date is
9 in the top right-hand corner.

10 A. Yeah. Yes, that sounds right to me. Been a long time
11 since I've seen this document.

12 Q. Of course.

13 Now, if you can recall, were performance reviews --
14 they took place twice a year at Google; is that right?

15 A. I don't recall. That has changed over the years as well.
16 I couldn't tell you.

17 Q. Okay. So this -- but Q1 2018, is that fair to say that it
18 represented, at least the beginning of the year in 2018, your
19 work for OCTO?

20 A. I suspect that's right.

21 Q. Do you know if it also includes time that you spent and the
22 work that you did in the latter part of 2017?

23 A. I can't say for sure.

24 MS. TOMEZSKO: So let's look at -- I'd like to look at
25 the bottom of this page where it says peer assessments. If we

NAIVROW2

Harteau - Cross

1 could just make that a bit bigger, particularly the assessment
2 by Will Grannis.

3 Q. And now Will Grannis was your manager when you had joined
4 OCTO; is that right?

5 A. That's correct.

6 Q. And this says, if I'm reading this correctly: Nic's
7 engagements are very high-value. His credibility and firsthand
8 experience are invaluable to leaders of enterprises
9 contemplating a move to Google Cloud. Do you see that?

10 A. I do.

11 Q. Do you agree with that statement?

12 A. It's a nice compliment. I will take Will at his word.

13 Q. Fair enough.

14 Now, let's, if we can, go to the next page. I'd like
15 to focus on the section number three, PM and Eng. We'll just
16 make that a little bit bigger. PM and Eng, are those
17 shorthands for something?

18 A. They are product management and engineering.

19 Q. I think we've talked about three core pillars of the role
20 in OCTO. Is PM and engineering one of those core pillars?

21 A. Engagement with the product and engineering teams within
22 Google was one of those pillars, yes.

23 Q. Got it.

24 Now, just looking at the content here, it says:
25 Summary of my contribution. Given the wording, can we assume

NAIVROW2

Harteau - Cross

1 that these are the contributions that you wrote into the
2 performance assessment process?

3 A. That sounds accurate.

4 Q. And the first one says: Wrote white paper for Twitter on
5 GCLB certificate handling. Do you see that?

6 A. I do.

7 Q. "GCLB," would that stand for Google Cloud Load Balancing?

8 A. That sounds correct.

9 Q. And you wrote here: It's a complex topic with lots of
10 code-spelunking; is that right?

11 A. That looks like what I wrote.

12 Q. Can you explain what code-spelunking means?

13 A. I would have used that to refer to, like, looking through
14 the actual code base for that service to understand how it
15 works.

16 Q. Now, the load balancing, was this also one of the problems
17 that Spotify had to solve for while you were there, say if
18 there was an unexpected spike in demand when a new artist
19 dropped an album?

20 A. The answer to that is a little complicated. We did have
21 load balancing problems. We did not at the time use the GCLB
22 architecture.

23 Q. Dealing with those problems with load balancing, were you
24 able to use your experience in that and translate to something
25 you were doing for Google Cloud once you joined OCTO?

NAIVROW2

Harteau - Cross

1 A. Sorry, I didn't quite understand the question.

2 Q. Dealing with the load balancing, the issues that you just
3 described, did you take your experience in that, were you able
4 to translate it to something that you were doing in OCTO once
5 you joined?

6 A. It's possible, yeah.

7 Q. It says: Wrote a white paper for Twitter. The white paper
8 that you authored, is that an example of something that's
9 referred to as an artifact at Google?

10 A. That would be considered an artifact, yeah.

11 Q. And was it your practice to create these artifacts to
12 demonstrate the work that you were doing at Google while you
13 were there?

14 A. I think it was -- I think that there were some asks for
15 artifacts as part of the office of the CTO role.

16 Q. And underneath that it says you led the data migration arm
17 of Fulcrum. Do you see that?

18 A. I do.

19 Q. Was Project Fulcrum a cross-functional effort in Cloud that
20 was focused on hybrid Cloud?

21 A. I have to say, I don't remember what Fulcrum was.

22 Q. Do you remember leading a data migration effort while you
23 were in OCTO?

24 A. I have to say, it was a long time ago. I don't remember
25 what that was or what it was about.

NAIVROW2

Harteau - Cross

1 Q. Do you have any reason to doubt that this accurately
2 represents what you wrote at the time you were doing -- when
3 you completed the self-assessment here?

4 A. No, I have no reason to think it's inaccurate.

5 MS. TOMEZSKO: Probably a good time to break in the
6 questioning, if that's okay, your Honor.

7 THE COURT: How much more do you think you have?

8 MS. TOMEZSKO: Ten minutes maybe.

9 THE COURT: What about plaintiff?

10 MR. CHIARELLO: I might have one minute of redirect.

11 MS. TOMEZSKO: I can keep going if that's what your
12 Honor prefers.

13 THE COURT: We've been going for an hour and a half
14 now. Hearing from both of you, I think we should take the
15 break now.

16 MS. TOMEZSKO: Sure.

17 THE COURT: All right. So it's now 10:39. We'll
18 resume at 10:55. And while you're out of the box, please
19 remember not to speak with each other or anyone else about the
20 case, and please do not do any research about the case.

21 Thank you.

22 (Jury not present)

23 THE COURT: Okay. Mr. Harteau, you may step down now.

24 THE WITNESS: Thank you.

25 THE COURT: Thank you. (Recess)

NAIHRow3

Harteau - Cross

1 (Jury present)

2 THE COURT: Please be seated.

3 Mr. Harteau, you are still under oath.

4 THE WITNESS: Yes. Yes, ma'am.

5 MS. TOMEZSKO: May I proceed your Honor?

6 THE COURT: You may.

7 BY MS. TOMEZSKO:

8 Q. Now, just picking up where we left off, Mr. Harteau, we
9 were looking at your performance review for the first quarter
10 of 2018, and we were looking at this PM and engineering
11 section.

12 I just want to go to the section underneath that but
13 first ask you, did you, when you were in OCTO, have the
14 opportunity to work with engineering and product management
15 leaders in Google?

16 A. I did.

17 MS. TOMEZSKO: Could we go to, under peer assessment,
18 Will Grannis' comment here. I'll just make it a bit bigger.

19 Q. And here he writes: "Nic's decision to focus on a
20 specific, high potential engineering project (Teradata
21 migration) will pay large dividends and is already earning him
22 the respect of key eng and product leadership."

23 Do you see that?

24 A. I do.

25 Q. Do you agree with that statement?

NAIHRow3

Harteau - Cross

1 A. It's — you know, it's not my words. It's not the words I
2 would use, but I think it was an impactful project.

3 Q. Now, at the same time you were also building and managing a
4 team within OCTO, is that right? This is, again first quarter
5 2018?

6 A. I think that's — I'm confused about the timelines there.
7 I don't know if this period would have covered the time that I
8 was managing the team within OCTO or not.

9 Q. Sure. Let's flip to the next page. This is the next page
10 of your review.

11 I'd like to focus on No. 4, team. If we can make that
12 a bit larger.

13 Now, here under your name it says role and identifies
14 you as a manager, is that right?

15 A. That's correct.

16 Q. Under summary of my contribution, again, this is your input
17 into the performance assessment process?

18 A. Correct.

19 Q. And it says, "Kicked off OCTO-Eng team." What was the
20 OCTO-Eng team?

21 A. That was the group that I was managing within OCTO.

22 Q. Underneath that it says, "Worked on building relationships
23 and development plans with your directs."

24 Does that refer to direct reports, the use of the word
25 "directs" there?

NAIHRow3

Harteau - Cross

1 A. Yes.

2 Q. If we could go on to the next page of your performance
3 review, what we see here says, "People manager review. Manager
4 review results."

5 Do you see that?

6 A. I do.

7 Q. This indicates that you had 11 direct reports, nine of whom
8 responded to this manager review survey. Do you see that?

9 A. I do.

10 Q. Later on in your same performance review, I'd like to go to
11 some feedback you received from one of your direct reports.

12 Jean, if we could go to the next page. Let's see if
13 it's on here. Actually, the Bates stamp, Jean, I think it is
14 53809. Here we go. I want to focus on — oh, there it is.
15 Thank you, Jean.

16 This says under open text questions for the manager
17 survey review: "I also appreciate his decision to spend months
18 in Sunnyvale (though he's based in New York City), sensing he
19 needed to accelerate his own relationships with cloud
20 engineering to better advocate for and support his team. This
21 decision has had a profound impact on his effectiveness as a
22 team leader."

23 Do you see that?

24 A. I do.

25 Q. Is it accurate that during this time you had spent months

NAIHRow3

Harteau - Cross

1 working out of California?

2 A. There was a period after I joined where I rented a spot in
3 California, yeah.

4 Q. In your observations as a manager of the team, would you
5 agree that your presence in California did have an impact on
6 your effectiveness as a team leader?

7 A. I would state that a different way. I think my presence in
8 California allowed me to develop relationships with product and
9 engineering leaders. I don't think it affected my ability to
10 lead the team that I had.

11 Q. Just very briefly I want to look at your next review, and
12 this would be the third quarter of 2018. I'll just pull up the
13 cover page of that and just show you what it is we're talking
14 about.

15 So this is your Q3 2018 performance review. So the
16 latter half of 2018, does that ring a bell?

17 A. Yeah.

18 Q. On, I think it is, the next page, under "other" here, if we
19 could just look at the top, says: "Focus on recruiting for
20 OCTO, including landing Joel Minton (L8 TSC) for the team."

21 Do you see that?

22 A. I do.

23 Q. And L8 TSC there, does that refer to a Level 8 technical
24 director in OCTO?

25 A. I'm not sure. I don't recognize the TSC, but it certainly

NAIHRow3

Harteau - Cross

1 refers to an L8 in OCTO.

2 Q. Do you recall Joel Minton?

3 A. I do.

4 Q. Was he a technical director in OCTO?

5 A. I believe so.

6 Q. And you were responsible for recruiting him and landing
7 him. Does that mean hiring him and bringing him onto the team?

8 A. That's correct.

9 Q. And now when you took on the people management
10 responsibilities that we were just talking about, you didn't
11 receive a promotion, did you?

12 A. Not to my recollection.

13 Q. It was just additional responsibilities you had in addition
14 to your individual contributor role in OCTO?

15 A. I think there was less pressure put on me for the
16 individual contributions, but the work was largely the same.

17 Q. Less pressure, does that mean because you were balancing it
18 with your people management responsibilities?

19 A. Correct.

20 Q. Again, I believe you testified — at some point I think we
21 had established it was around September 2018 — that you had
22 left OCTO and joined a different team within Google?

23 A. I can't speak to the date, but I did transition to a
24 different role at Google.

25 Q. And was that a different job than what you were doing in

NAIHRow3

Harteau - Redirect

1 OCTO previously?

2 A. Yeah, it was a pretty significantly different job.

3 MS. TOMEZSKO: Thank you, Mr. Harteau. I have no
4 further questions.

5 REDIRECT EXAMINATION

6 BY MR. CHIARELLO:

7 Q. Mr. Harteau, I want to just talk very briefly about your
8 2018 Q1 performance that Ms. Tomezsko showed you a few minutes
9 ago.

10 Now, your rating for that evaluation was consistently
11 meets expectations, is that right?

12 A. That looks correct.

13 Q. And that's 2 out of 5?

14 A. 3 out of 5. 2 out of 5?

15 MR. CHIARELLO: Well, can we put up, Mr. Yang,
16 Plaintiff's 125. If we could look at the first page of that.
17 I guess maybe the second page. There we go.

18 A. 2 out of 5 it is, yeah.

19 Q. And in connection with this review, do you remember whether
20 Mr. Grannis gave you any constructive feedback?

21 A. I don't recall.

22 Q. Do you recall whether Mr. Grannis gave you feedback here or
23 elsewhere to develop your relationships with engineering?

24 A. I'm sure that he would have, but I don't specifically
25 recall those conversations.

NAIHRow3

Harteau - Redirect

1 MR. CHIARELLO: Mr. Yang, can we go to page 15, and I
2 just want to call out the first bullet under provide highlights
3 from the past six months.

4 Q. There's feedback here: "I would like to see Nic build
5 strong ties with cloud engineering/PM leadership so he can use
6 that relationship to build bridges and feedback loops between
7 their teams and his. I would like to see more direct formal
8 cross-team collaboration between the teams to the point that
9 they can consider us an extension of their own team."

10 Do you recall receiving that feedback from
11 Mr. Grannis?

12 A. I don't recall, but I certainly would have in the course of
13 that review.

14 MR. CHIARELLO: And, Mr. Yang, can we look at page 17,
15 just the top line.

16 Q. Looks like you also noted that a goal of yours was to
17 improve relationship with key engineering partners?

18 A. That looks correct.

19 MR. CHIARELLO: I have no further questions.

20 MS. TOMEZSKO: I don't have any further questions for
21 the witness.

22 THE COURT: Mr. Harteau, you are excused. Thank you.

23 (Witness excused)

24 THE COURT: Are we moving to the Eryurek and Wilson?

25 MS. GREENE: Yes, first Mr. Wilson's and then

NAIHRow3

"Wilson"

1 Mr. Eryurek's.

2 THE COURT: All right. Would you like me now to
3 briefly explain the —

4 MS. GREENE: Please, your Honor.

5 THE COURT: So, members of the jury, you are now going
6 to hear testimony first from a Mr. Wilson and then from a
7 Mr. Eryurek. And due to a technical issue, you are not going
8 to be seeing and hearing the testimony by video. The testimony
9 is going to be read to you, and we just want to clarify that
10 the readers are not the witnesses themselves.

11 Go ahead.

12 MS. GELFAND: (Reading)

13 "Q. I want to go through some of your background. What is
14 your highest level of education?

15 "A. Master's.

16 "Q. When did you receive the master's?

17 "A. 2000, I believe. Don't quote me on the date. I believe
18 roughly 2-, 2000.

19 "Q. And from where did you receive your master's?

20 "A. Lindenwood University.

21 "Q. What was your master's in?

22 "A. It was an MBA.

23 "Q. When did you receive your undergraduate degree?

24 "A. 1991.

25 "Q. From where?

NAIHRow3

"Wilson"

1 "A. Arizona State University.

2 "Q. And in what field?

3 "A. It was called — materials management is the official
4 degree that was given.

5 "Q. And explain to me what materials management details.

6 What's that?

7 "A. When someone asks me that question, I say it's a degree in
8 manufacturing. So I would manage manufacturing plants, and so
9 forth, operations management. So operations management is
10 probably the easiest thing. So all of what goes along with
11 operations management as well.

12 "Q. Do you have any other certifications or technical
13 training?

14 "A. Yes. I've received them. I've not kept them current.

15 "Q. Do you have any — have you had any training with respect
16 to technical engineering or computer science programming?

17 "A. Yes.

18 "Q. What training have you received in those areas?

19 "A. I went to — they called it IBM programming school in the
20 very early '90s. So I was trained in SAP. I was trained in
21 SEBOL. I was trained in AWS, Oracle databases. The training
22 that I went to, I'm not sure if I could list them all.

23 "Q. Do you consider yourself to be a computer engineer?

24 "A. Frame what you think an engineer is.

25 "Q. What do you understand a computer engineer to be?

NAIHRow3

"Wilson"

1 "A. A computer engineer is somebody who architects how the
2 technical infrastructure and also the technical software
3 infrastructure should be built and designed for scalability,
4 usability, and globally across the world.

5 "Q. Do —

6 "A. That's the definition that I consider myself as.

7 "Q. OK. And so looking at your résumé, we're going to look at
8 Defendant's Exhibit 28. The first professional job you list on
9 this résumé is Ernst & Young in 1995. Do you see that?

10 "A. I'm trying to get there. Yes.

11 "Q. Is that the first professional position that you held
12 following graduation from college?

13 "A. No.

14 "Q. Then how many jobs did you hold prior — how many
15 professional jobs did you hold prior to the job as Ernst &
16 Young?

17 "A. One.

18 "Q. And what was that?

19 "A. I was a systems analyst working on space stations, space
20 shuttle programs.

21 "Q. Where — who was the employer?

22 "A. IBM in Houston, Texas.

23 "Q. And did that job involve computer engineering or related
24 skills?

25 "A. Yes.

NAIHRow3

"Wilson"

1 "Q. And how long were you in that position?

2 "A. From '91 to '95.

3 "Q. And does your résumé accurately reflect your work at
4 Ernst & Young?

5 "A. Yes.

6 "Q. Was that that a technical role?

7 "A. Yes.

8 "Q. OK. And moving to the entry from 1997 through 2005, it
9 says 'IBM/PricewaterhouseCoopers.' Were those both your
10 employers?

11 A. PricewaterhouseCoopers Consulting was acquired by IBM. I
12 don't recall the year.

13 "Q. Did you manage a group?

14 "A. Yes.

15 "Q. How many people were in the group that you managed?

16 "A. Define 'managed.'

17 "Q. How many people directly reported to you?

18 "A. I'm unsure how to answer that question because I was in a
19 professional services role, and this included many different
20 organizations. And I — if you mean directly inside of IBM,
21 it's roughly 50 people. I — very hard to answer that question
22 because it was a — it depends on which time frame we're
23 speaking about.

24 "Q. Over how many people did you have managerial
25 responsibility either directly or indirectly?

NAIHRow3

"Wilson"

1 "A. At its height, more than 700.

2 "Q. Does that include teams that were directly managed through
3 other organizations, other organizational units?

4 "A. Correct.

5 "Q. So you might be supervising or managing a project that
6 involves people from other teams?

7 "A. Correct.

8 "Q. OK. You went to Siemens Energy in 2005, is that correct?

9 "A. Yes. It was Siemens Power Generation at that moment.

10 "Q. OK. And was that a predecessor, an affiliate, a
11 subsidiary of Siemens Energy?

12 "A. It was a division of Siemens.

13 "Q. How large was the division?

14 "A. In terms of?

15 "Q. In terms of the number of people.

16 "A. I — factually speaking, Siemens Energy had roughly 65 —
17 65,000 employees in 180 countries. That's factually correct.
18 I believe that was at 2011. Prior to that, it was something
19 less because the Siemens Group combined two organizations
20 together. I don't recall exactly how many it was. It was
21 above 25,000, less than 65,000.

22 "Q. Well, what I'm trying to understand is, with respect to
23 the information that's there, 35 billion in sales, 65,000
24 employees in 180 countries, was that for your division or for
25 Siemens as a whole?

NAIHRow3

"Wilson"

1 "A. It was the division.

2 Q. And you have your title here as CIO and business
3 transformation executive. Do you see that?

4 "A. Yes.

5 "Q. How long were you in that role?

6 "A. About three years.

7 "Q. What role did you have prior to being in that role?

8 "A. I don't recall what the title was.

9 "Q. With respect to your title, were you a CIO executive or
10 were you the CIO?

11 "A. Can you rephrase the question?

12 "Q. Sure. I'm trying to understand when you say "CIO," were
13 you the chief information officer for Siemens Energy or were
14 you an executive in the chief information office?

15 "A. So I was CIO of Siemens Power Generation, and I reported
16 directly to the CEO. Eventually we combined it into an
17 umbrella organization called Siemens Energy where I was still
18 CIO of Siemens Power Generation and reported to the CEO.

19 "Q. And what team or what unit did you manage?

20 "A. IT.

21 "Q. How many people were in the IT group?

22 "A. I don't have a specific number. More than 1,000.

23 "Q. And then you went to BG Group, is that correct?

24 "A. Yes.

25 "Q. What kind of company is BG Group?

NAIHRow3

"Wilson"

1 "A. It's an oil and gas exploration company.

2 "Q. And you were the CIO and head of Google IT in that role?

3 "A. For the Americas.

4 Q. And did you oversee the IT group in that role?

5 "A. A part of the IT group. There was a global CIO that I
6 reported to.

7 "Q. And how large was the team you managed?

8 "A. I don't recall.

9 "Q. At the time that you worked for BG Group, was BG Group's
10 technology cloud based?

11 "A. No.

12 "Q. And I'm forgetting what the opposite of cloud based is.

13 "A. Oh, you can say data center.

14 "Q. Data center. OK.

15 "And after BG Group, you went to GE Oil & Gas, is that
16 correct?

17 "A. Correct.

18 "Q. And in what role did you join GE Oil & Gas?

19 "A. Chief technology officer.

20 "Q. Were you the sole chief technology officer of GE Oil &
21 Gas, or were there other chief technology officers as well?

22 "A. I was chief technology officer. I had people who used
23 that term, the — the — the word chief technology officer of,
24 like, operations, and so forth, who worked for me.

25 "Q. And to whom did you report?

NAIHRow3

"Wilson"

1 "A. I reported to the CIO.

2 "Q. And how large was the team that you managed?

3 "A. Contractors and employees, more than 1,000.

4 "Q. Do you know how many employees?

5 "A. More than 500. I — I — I would have to go look at the
6 notes to know the exact number.

7 "Q. And at the time you were working for GE, was the
8 technology cloud based?

9 "A. No.

10 "Q. In any of the roles that you had held prior to Google, in
11 any of those roles, was the technology cloud based?

12 "A. So at GE, I brought GE to the cloud. So we were not cloud
13 based when we started. We were when we — we were done.

14 "Q. And —

15 "A. Same thing as P2. They were not cloud based. I brought
16 them to be.

17 "I'll repeat the entire answer again for clarity.

18 "At GE they were not cloud based. They were data
19 center based. I brought them to cloud. That was my job. When
20 I moved to P2 Energy Solutions, they were also data center
21 based, and I moved them to cloud.

22 "Q. Did you complete the transformation from data center to
23 cloud while at GE?

24 "A. Define "complete."

25 "Q. Were there still aspects of GE Oil & Gas that were data

NAIHRow3

"Wilson"

1 center based?

2 "A. Yes.

3 "Q. And from GE did you move to Google?

4 "A. No.

5 "Q. Where did you go next?

6 "A. P2 Energy Solutions.

7 "Q. And why did you leave GE?

8 "A. I was approached by the CEO of P2 Energy Solutions to
9 become their CTO. It seemed to be an attractive opportunity
10 from a career and learning perspective.

11 "Q. And how long did you work for P2 Energy Solutions?

12 "A. Roughly one year.

13 "Q. Why did you leave P2 Energy Solutions?

14 "A. Will Grannis and Brian Stevens called and said, Would you
15 like to work in the office of the CTO at Google? For me as an
16 individual who — never thought I'd have the opportunity to
17 work for Google.

18 "Q. Had you known Mr. Grannis and Mr. Stevens before they
19 called you?

20 "A. No.

21 "Q. Do you know how the recruiting organization found you?

22 "A. I've done several presentations for AWS where I was seen
23 quite often, and one of the recruiters saw it and called me.

24 "Q. When you say that you've 'done several presentations for
25 AWS,' what do you mean by that?

NAIHRow3

"Wilson"

1 "A. They had a conference and ask me to speak, and it was
2 recorded and it was recorded online, and people were able to
3 see it.

4 "Q. But 'they,' you mean AWS had a conference?

5 "A. Yes.

6 "Q. OK. Focusing on that position, then, how did the
7 recruiter describe the position to you?

8 "A. I really don't recall. I mean — well, no, bullet points
9 I do recall. Individual contributor role, focused on helping
10 customers adopt cloud in the oil and gas field, and also
11 helping to build Google Cloud as a global cloud provider —
12 those were the three bullet points that I recall specifically.

13 "Q. Did the recruiter describe it as an engineering role?

14 "A. I'm — in certain aspects, yes.

15 "Q. Do you recall what the recruiter said with respect to it
16 being an engineering role?

17 "A. Architecting solutions for customers.

18 "Q. Other than the three bullets you described earlier, do you
19 recall anything else with respect to what was described to you
20 regarding the role?

21 "A. Yes. Get your hands dirty and build interesting things for
22 health customers, leverage AI and machine learning to help
23 customers drive value. That was kind of the context.

24 "Q. Who described those aspects to you?

25 "A. I — I believe all four interviewers did.

NAIHRow3

"Wilson"

1 "Q. Was your oil and gas industry experience something that
2 was considered as well as — or discussed? Was your oil and
3 gas industry experience something that was discussed?

4 "A. Yes. In terms of how you went after an outcome and using
5 technology to go do it.

6 "Q. In oil and gas at the time you joined Google, who were the
7 major industry players in oil and gas?

8 "A. ExxonMobil, Chevron, ConocoPhillips, and Saudi Aramco. I
9 mean there's a lot of people. There's a lot of organizations.

10 "Q. Let me reframe. Did you know personally any of the
11 C-suite executives at Exxon?

12 "A. I'd have to — they don't — they don't refer to
13 themselves as C-suite at Exxon. They don't have a chief
14 information officer, chief technology officer. They don't have
15 the title segments.

16 "Q. Putting aside the titles, the functional equivalent of
17 C-suites, did you know the people who are in those roles even
18 if they didn't have those titles?

19 "A. Define 'know.'

20 "Q. Have a personal relationship, they knew who you were, you
21 knew who they were, you discussed or had conversations
22 beforehand?

23 "A. In those terms, yes.

24 "Q. How well did you know them?

25 "A. I provided advice, provided advice to them in technology

NAIHRow3

"Wilson"

1 on — maybe once a year. It was a casual — I would describe
2 it as a casual business relationship. They knew me through my
3 presentations that I had done in the industry.

4 "Q. And what role were you in during the time you were
5 providing casual advice to them?

6 "A. GE Oil & Gas, the CTO of oil and gas.

7 "Q. And what was the —

8 "A. I'm sorry, and also the CTO of P2 and also the — my
9 current role as — my current role inside Google.

10 "Q. OK. Before you got to Google is what I'm focusing on.

11 What was the context in which you had those discussions?

12 "A. They were trying to figure out cloud, and they were asking
13 for advice and counsel on what they should think about.

14 "Q. Mr. Wilson, with respect to your professional background,
15 what do you recall discussing with the recruiter about your
16 professional background?

17 "A. My experience with AWS and moving to — moving GE to the
18 cloud. Specifically, we had notoriety of moving a thousand
19 apps into AWS and reducing costs by more than 50 percent, and
20 this was the specific thing that she had mentioned on why she
21 wanted to call me.

22 "Q. Do you recall anything else you discussed with the
23 recruiter regarding your professional background?

24 "A. I'm sorry, yes, I — I — yes. So my experience in oil
25 and gas, my experience in technology in general, and then my

NAIHRow3

"Wilson"

1 expertise from a technical perspective.

2 "Q. What do you recall discussing with the recruiter with
3 respect to your technological background?

4 "A. Like what did it — what did it mean to be CTO of GE Oil &
5 Gas and what were my responsibilities and how did I make
6 decisions from a technical perspective. I think migration was
7 another big piece, like how do we migrate applications into the
8 cloud. These are the sorts of things they asked about.

9 "Q. I'm asking what you recall discussing with the
10 interviewers about your professional background.

11 "A. I — again, I — it was about migration to the cloud. It
12 was about technical experience. It was about failure
13 scenarios. It was also like how do you work with senior
14 executives and what were your kind of modes of communication in
15 explaining values to executives, how do you get volume — I'm
16 sorry, I'll speak more slowly.

17 "How did we migrate to the cloud? How did we get
18 senior executives to agree to migrate to the cloud? Also how
19 did we train and gain enough knowledge about these new
20 technologies? What was our approach, and how did we work with
21 our partners to go and ensure we had the right training for our
22 staff and ourselves?

23 "Q. Anything else you recall discussing in the interview
24 process regarding your professional background?

25 "A. Yes. Besides the big organizations I've managed,

NAIHRow3

"Wilson"

1 complexity that I've managed, something that does stand out
2 that I should say is complexity within terms of people, number
3 of products, and technologies I used, number of locations that
4 that technology was used like globally. What stood out was
5 that I actually was running technology in Africa, in frontier
6 countries. So that was our interesting point of discussion,
7 because many oil and gas companies were there doing
8 exploration, and then the complexity associated with
9 stakeholders, not only internal but also external stakeholders
10 like consulting companies, outsourcing companies, and so forth,
11 how you manage those relationships.

12 "Q. OK. We're going to put up Plaintiff's Exhibit 3. Do you
13 recognize this document?

14 "A. No.

15 "Q. OK. Now I'm going to ask you to do the same thing again,
16 just read through this, and then I'm going to ask you whether
17 you're familiar with the content, even if you're not familiar
18 with this document.

19 "A. OK.

20 "OK. I am familiar with the words on this document,
21 yes.

22 "Q. With respect to the responsibilities of the role as
23 described in this document, was it generally consistent with
24 the role you performed once you started in OCTO?

25 "A. No.

NAIHRow3

"Wilson"

1 "Q. In what way was it different?

2 "A. This focused — this — I interpret these words in the way
3 they're written to be very customer focused, where you're
4 interacting with customers. There is also an aspect M&A
5 banking, mergers and acquisitions. There was also a
6 responsibility around building new products which is not
7 reflected in this.

8 "Q. Did you join the office of the CTO when you joined Google?

9 "A. Yes.

10 "Q. Who did you consider as your peers in OCTO?

11 "A. Ev- — everyone.

12 "Q. Did you know the levels of the other technical solutions
13 consultants on Will Grannis' team?

14 "A. In the beginning, no, but eventually, yes.

15 "Q. At the beginning did you know Evren's level?

16 "A. No.

17 "Q. At the beginning did you know Ms. Rowe's level?

18 "A. No.

19 "Q. How did you come to know their levels?

20 "A. Casual conversation.

21 "Q. Do you recall how long you had been working together when
22 you learned Ms. Rowe's level?

23 "A. Oh, I'd say about a year.

24 "Q. Do you recall how long you had been working together when
25 you learned Mr. Eryurek's level?

NAIHRow3

"Wilson"

1 "A. About a year.

2 "Q. Are you familiar with the term 'verticals' as that term is
3 used as Google?

4 "A. Yes.

5 "Q. And what was discussed with respect to verticals at the
6 time you were going through the interview process?

7 "A. They needed industry expertise, and that's why they asked
8 me industry expertise questions.

9 "Q. And was anything communicated to you with respect to what
10 your responsibilities would be within the verticals?

11 "A. To help customers in that vertical within oil and gas to
12 adopt cloud.

13 "Q. Have you heard the term "verticalization"?

14 "A. Yes.

15 "Q. And what did you understand that term to mean as it was
16 used in Google?

17 "A. Internally or externally?

18 "Q. Internally.

19 "A. Creating a go-to market strategy that directly pointed at
20 a specific vertical like oil and gas to be able to penetrate
21 that market in an effective way and provide solutions that are
22 tailored to that industry's vertical's specific needs.

23 "Q. Was verticalization something that was discussed during
24 the time you were interviewing for the position at Google?

25 "A. No, not in those terms.

NAIHRow3

"Wilson"

1 "Q. Was anything discussed with respect to Google's future
2 plans to verticalize?

3 "A. No.

4 "Q. Was anything discussed with respect to what role you might
5 play in the future of the vertical?

6 "A. No.

7 "Q. Did you have an expectation that if Google verticalized in
8 the energy space, you might be considered for the head of the
9 energy vertical?

10 "A. No, I don't recall anyone saying something like that.

11 "Q. Even if those words weren't used, did you have an
12 understanding about that?

13 "A. No intent, no.

14 "Q. At some point in time, did you learn that Google was
15 verticalizing in the energy space?

16 "A. Well, yes, as far as that was in the energy vertical.

17 "Q. How did you learn that they were verticalizing?

18 "A. It was not at one moment. It was over time. That
19 culminated in a meeting that said that myself and other people
20 who are industry experts were going to move into the
21 verticalized industries.

22 "Q. Was Darryl Willis appointed as the vice president for
23 energy?

24 "A. Yes.

25 "Q. And so he became the head of that vertical, is that right?

NAIHRow3

"Wilson"

1 "A. Correct.

2 "Q. Were you upset that you weren't considered for the
3 position?

4 "A. Yes, I was disappointed.

5 "Q. Did you know that the position was being considered prior
6 to learning that the position had already been filled?

7 "A. Yes. Yes, I was aware.

8 "Q. Do you know whether you were considered at all for the
9 position?

10 "A. That's completely unclear to me.

11 "Q. Did you discuss either your consideration or lack of
12 consideration for that role with anyone?

13 "A. Yes.

14 "Q. With whom did you discuss it?

15 "A. Both Will Grannis and Tariq.

16 "Q. What did you discuss with Will Grannis?

17 "A. Was there an opportunity for me to have that role in
18 leading that vertical.

19 "Q. When was that conversation?

20 "A. I don't recall.

21 "Q. Was it before or after Darryl was announced as the new
22 head?

23 "A. Before.

24 "Q. And what did Mr. Grannis say to you?

25 "A. I — I — I can't remember precisely.

NAIHRow3

"Wilson"

1 "Q. Do you remember anything about what he said to you?

2 "A. He said it was not likely I'd become the head of the
3 vertical, as they were looking for another persona of a person
4 than who I was. Also that Tariq was a different leader than —
5 than others, and he had his ideas of who he wants in that role.
6 And he looked at myself as a technical person who should stay
7 technical rather than going and leading the vertical. That's
8 the best of my recollection.

9 "Q. Was Ms. Rowe the one who had experience in financial
10 services?

11 "A. Yes.

12 "Q. Was she operating as the person in OCTO with
13 responsibilities as to the financial services vertical?

14 "A. Yes.

15 "Q. And so was she essentially sort of your corollary for
16 financial services?

17 "A. Yes.

18 "Q. Did Mr. Eryurek have any particular vertical experience in
19 any particular vertical, I should say?

20 "A. Yes. He was the CTO of the GE medical. So he was in the
21 medical vertical, as I was CTO of GE Oil & Gas.

22 "Q. And so was he your corollary with respect to the medical
23 vertical?

24 "A. Yes.

25 "Q. Were there any other individuals in OCTO who had those

NAIHRow3

"Wilson"

1 similar types of responsibilities with respect to a vertical
2 besides you, Ms. Rowe, and Mr. Eryurek?

3 "A. I can't remember his name. I apologize. You must have
4 it.

5 "Q. Jeff Kember?

6 "A. Yes, Jeff Kember.

7 "Q. We're going to put up Plaintiff's Exhibit 144.

8 "Did you receive a sign-on bonus of \$75,000, is that
9 right?

10 "A. Yes.

11 "Q. That's \$75,000, was it representative of anything in
12 particular?

13 "A. I think giving up some of the optionality I had back in
14 P2, I think that was what that was supposed to represent.

15 "Q. OK. And under equity compensation, it says you will be
16 granted 3,000 restricted stock units. Do you see that?

17 "A. Uh-huh.

18 "Q. Were you granted those 3,000 stock units?

19 "A. Yes.

20 "Q. And the time you were hired, was the value of those stock
21 units approximately \$2.5 million?

22 "A. I do not know. I would have to go and look and do the
23 math.

24 "Q. Do you recall whether you had an understanding about what
25 those stock units were worth?

NAIHRow3

"Wilson"

1 "A. Of course I did the math. I just don't recall what —
2 what the stock price was at that moment.

3 "Q. If I told you that the stock price at the time was
4 somewhere in the vicinity of \$845 a share, would that sound
5 about right to you?

6 "A. Yes, it does.

7 "Q. And do you know where the share price is right now?

8 "A. 1,750, somewhere around there.

9 "Q. And were the shares that you were granted representative
10 of anything?

11 "A. So it was never meant — it was never discussed in those
12 terms.

13 "Q. What was discussed with you with respect to the equity
14 award?

15 "A. I was giving up a percentage of P2 Energy Solutions, and I
16 was looking for a — something similar inside Google which
17 would be issued. And in the conversation, this is the — this
18 is the number they proposed, and it's the number I accepted.
19 The numbers never changed.

20 "Q. What was your level at the time of hire?

21 "A. L9.

22 "Q. When did you first learn what your level would be?

23 "A. Two or three months in. I didn't — and there was no
24 level on this document. I — when I joined, I had no questions
25 about level. I just knew I had a job. And at some point

NAIHRow3

"Wilson"

1 knowing what level you were was important for the career
2 ladder. So you had to know whether you were an 8 or 9, so I
3 had to go and find that out.

4 "Q. So you had already started to work at Google when you
5 learned what your level was?

6 "A. Correct.

7 "Q. And who did you ask what your level was?

8 "A. I didn't. I went and looked it up in Workday.

9 "And I'm so sorry. I continue not to speak clearly.
10 I will do better. Thank you.

11 "Q. And at that point in time, you learned you were an L9?

12 "A. Correct.

13 "Q. And so is it true that you did not ask to be a L9?

14 "A. I'm not sure how to answer. I never asked the question:
15 Please can you make me an L9? I never asked that questions.

16 "Q. Have you ever asked any questions prior to joining Google
17 with respect to what your ladder would be or should be?

18 "A. No. I did not understand the ladder concept, and I did
19 not understand that concept until probably nine months in.

20 "Q. At any point in time, did anyone tell you what factors or
21 criteria the company had considered in deciding what your level
22 would be at the time of hire?

23 "A. My understanding was they were looking for people who
24 understood cloud, understood how to migrate customers to the
25 cloud, understood technology well, and could speak to

NAIHRow3

"Wilson"

1 executives and other customers. That's what I understood they
2 were looking for.

3 "Q. Did anyone explain to you specifically with respect to
4 what level you would be what factors or criteria beyond that
5 they were considering?

6 "A. No.

7 "Q. Did anyone at any point in time tell you that your level
8 was dictated by your years of industry experience?

9 "A. No.

10 "Q. At any point in time in describing for you what
11 experience, etc., needed to be in the office of the CTO, did
12 anyone mention to you levels?

13 "A. Never. Levels — levels were never discussed.

14 "Q. During the time that you were in the office of the CTO,
15 did you ever work with Ms. Rowe?

16 "A. Yes.

17 "Q. In what capacity did you have a chance to work with her?

18 "A. Just things on, like, presentations, and so forth. If I
19 was giving a presentation, I would look for her advice on,
20 like, what she's presented. She was a prolific presenter on
behalf of Google. I was not. So I looked to her on kind of
like what she presented on and how she did it and what were the
23 things Google was looking for for us to present on.

24 "Q. What was your understanding of what Ms. Rowe's role was at
25 the time when you were both in the CTO?

NAIHRow3

"Wilson"

1 "A. Same as mine but for the financial vertical.

2 "Q. What was your understanding of her background?

3 "A. A deep financial services background working with C-level
4 executives, go and build out financial products customers would
5 use.

6 "Q. Do you know how many years of financial services industry
7 experience she had?

8 "A. No.

9 "Q. Was that something that was kind of a topic of discussion
10 in OCTO, the number of years of experience that people had?

11 "A. Not as far as I knew.

12 "Q. During the time when you had the opportunity to interact
13 with Ms. Rowe, did you find her to be professional?

14 "A. Yes.

15 "Q. Did you find her to be knowledgeable?

16 "A. Yes.

17 "Q. Did you find her to be knowledgeable with respect to
18 financial services?

19 "A. Yes.

20 "Q. Did you find her knowledgeable with respect to
21 engineering?

22 "A. Yes.

23 "Q. Did you find her knowledgeable with respect to project
24 management?

25 "A. Yes.

NAIHRow3

"Wilson"

1 "Q. Did you personally have any criticisms of her performance?

2 "A. No.

3 "Q. Did you ever hear anyone else express any criticisms of
4 her performance?

5 "A. No.

6 "Q. Now, you had mentioned earlier you had a discussion with
7 her about leveling at some point in time, is that correct?

8 "A. I'm not sure if I said that earlier, but, yes, at one
9 point in time, she and I had had a discussion around what
10 levels we were. Yes, that is correct.

11 "Q. Did you tell her that you were a Level 9?

12 "A. Yes, I did.

13 "Q. Did she seem surprised to hear that?

14 "A. Yeah. I know her well enough to know that she was
15 surprised, yes.

16 "Q. Did she say anything to you about that, about you being a
17 Level 9?

18 "A. Yes. She asked why I would be a Level 9 and she would be
19 a Level 8.

20 "Q. Do you recall what you said?

21 "A. I — I was not involved in the hiring process, so I really
22 don't know. I also recall I said something to the effect that
23 I'd been a CTO of a \$5 billion software company and that I've
24 had some very kind of deep experiences in cloud. I said having
25 had the CTO title seems to matter something inside Google for

NAIHRow3

"Wilson"

1 some reason.

2 "Q. Anything else you recall?

3 "A. I'm thinking. Yeah, I think those were the things that I
4 said, and I said that I think those were the things that they
5 valued because it's a very technical culture at Google. And
6 being the lead technical person for large organizations was
7 meaningful.

8 "Q. At the time you said that, did you know whether those were
9 the reasons why you were a Level 9 versus a Level 8?

10 "A. I — I still don't know today.

11 "Q. And do you know what the — what were the reasons Google
12 — what Google's reasons were for making Ms. Rowe a Level 8?

13 "A. No.

14 "Q. We're going to look at Plaintiff's Exhibit 8.

15 "Do you recognize this document?

16 "A. No.

17 "Q. Do you see yourself as a recipient on this email?

18 "A. Oh, yeah, I do.

19 "Q. OK. And we're going to look at Exhibit — Defendant's
20 Exhibit 38.

21 "Have you seen this or a similar document to this
22 before?

23 "A. Yes.

24 "Q. And what do you recognize this document to be?

25 "A. This is the latest kind of eng doc on expectations

NAIHRow3

"Wilson"

1 depending on levels. It's a leveling guide that allows you to
2 understand how you should be seen from a — an expectations
3 perspective.

4 "Q. So in that email, Ms. Lawrence is referencing the eng
5 leveling guide as a version of this. Did you understand the
6 version of this to be what she is referencing?

7 "A. To be clear, this is the 2020 version. There were other
8 versions that were newer. I believe that this — looking at
9 this doc that I'm familiar with is — it appears to be
10 substantially the same.

11 "Q. How long were you in your role OCTO?

12 "A. They probably have a better record than I did. Eighteen,
13 20 months.

14 "Q. And again, just for purposes of the record, during the
15 time that you were in OCTO, did you have the same role for the
16 entirety of that time?

17 "A. Yes.

18 "Q. And what were your day-to-day responsibilities in that
19 position?

20 "A. Go help customers adopt cloud, go help partners adopt
21 cloud.

22 "I am so sorry. Go and help customers adopt cloud; go
23 and help partners adopt cloud; at Google Cloud, figure out what
24 new products need to be built; and for about three months I
25 worked on M&A work, M&A being mergers and acquisitions.

NAIHRow3

"Wilson"

1 "Q. Have you ever heard your role in OCTO described as having
2 three pillars?

3 A. Well, tell me the pillars, and I might be able to tell you.
4 I — I — I think yes. I — I don't really recall what the
5 pillars were. Like, one is service to the customers, of
6 course. One is building new products, which is — was
7 something else that kind of came up, but — I recall three
8 pillars, but I don't recall their names.

9 "Q. OK. Was one customer-related work?

10 "A. Yes.

11 "Q. Was one influencing the platform and product?

12 "A. Yes, that was the second one I mentioned.

13 "Q. And was one speaking and evangelism?

14 "A. Yes.

15 "Q. Did the role require or involve engaging with other teams
16 across Google?

17 "A. Yes.

18 "Q. Was that true of all the technical directors in OCTO?

19 "A. Yes.

20 "Q. What were the other teams with which you would engage?

21 "A. So technical account management, customer engineers,
22 product managers, product engineering support. I mean, a lot
23 of the rest of Google Cloud.

24 "Q. And were the other technical directors in OCTO engaging
25 with those same sort of teams?

NAIHRow3

"Wilson"

1 "A. The ones I associated with and I knew their work, yes.

2 "Q. And the ones you associated and knew their work, those are
3 the ones you've mentioned in previous answers?

4 "A. Yes. I mean, Christopher, Jonathan, Jen, Paul — yeah,
5 all — all of those. Evren, Ulku, yes.

6 "Q. With respect to leveling, did you know the reasons for
7 anyone's levels in OCTO?

8 "A. No.

9 "Q. Did there come a time where you met with Mr. Shaukat
10 regarding the move?

11 "A. Eventually, there was a meeting with Tariq, yes.

12 "Q. And who was in the meeting with Tariq?

13 "A. I — I — I just don't recall. It was not a — it was a
14 little bit of a hastily put together meeting, so I just don't
15 recall all the details around it.

16 "Q. And what do you recall being said in that meeting?

17 "A. Our roles hadn't really changed, and, you know, the
18 expectation we were — were going to continue to go work with
19 our customers and, you know, nothing — almost like nothing
20 changed is kind of the way I walked away from the meeting.

21 "Q. Were you told that your titles would be changing?

22 "A. There was some mention of a new — of a new title. There
23 was no — you know, in Google there is the technical solutions
24 consultant titles, but the titles that they had — and I just
25 don't recall exactly what they were — were new, but they were

NAIHRow3

"Wilson"

1 not, like, documented in HR systems as far as I could tell.

2 "Q. All right. Were you told the title of global client
3 technical lead?

4 "A. It was something of that nature. The — the name changed
5 I think a couple of times, but I think that was the final one
6 of the global technical leads.

7 "Q. So it was your understanding that there was overlap
8 between technical solutions and global client technical lead?

9 "A. Yes.

10 "Q. Did you have any understanding as to what distinguished
11 those roles from each other?

12 "A. It was not clear to me.

13 "Q. All right. Was there any discussion with Mr. Shaukat
14 about the differences between the global client lead and the
15 global client technical lead?

16 "A. I did not personally have a conversation with him about
17 that.

18 "Q. Did anyone ever explain to you what the difference was
19 between those roles?

20 "A. Yes. Darryl Willis tried to explain the difference, but I
21 was left with the impression he was confused also.

22 "Q. Do you recall what Mr. Willis told you?

23 "A. Since he and I were senior people in the organization, our
24 thought was that we were just going to say yes, sir, a little
25 bit overlapping. But our goal is to go serve the customer, and

NAIHRow3

"Wilson"

1 so we should work together and find a way to go serve the
2 customers with each one of our capabilities and do that to the
3 best of our ability. That was what we settled on, not a
4 specific set of role of who does what.

5 "Q. What is the context in which you would discuss Ms. Rowe
6 with other people?

7 "A. A big financial services customer is doing something that
8 she's working on and she needed help kind of solving a problem,
9 or we were working on something complicated and a financial
10 services customer had solved that problem, we would talk. She
11 would do a presentation; people would talk about that. I have
12 a — a personal relationship with her as a friend, so — there
13 were other people who did too, so sometimes it was on the
14 personal side.

15 "Q. From what you observed, did Ms. Rowe have good
16 relationships with other people at Google?

17 "A. The people I knew generally liked her. I mean, I can't
18 speak for every single person. I don't know what they thought.

19 "Q. At some point in time, did you learn that Ms. Rowe had
20 raised concerns that she was leveled below her male peers?

21 "A. She had stated that to me.

22 "Q. Sure. Really, I'm asking, has Ms. Rowe's behavior for the
23 worst as far as you've observed it since she filed the lawsuit?

24 "A. No. In all my interactions with her personally and
25 professionally, she's been a professional, very professional

NAIHRow3

"Wilson"

1 person, yes.

2 MS. GELFAND: No further questions.

3 THE COURT: Thank you, Ms. Gelfand.

4 Move to Mr. Eryurek now.

5 MS. GREENE: Yes.

6 THE COURT: OK.

7 MS. GREENE: And, your Honor, it might be helpful to
8 clarify for the jury that that was both plaintiff and
9 defendant's designations.

10 THE COURT: Yes, thank you.

11 Is that going to be true with Mr. Eryurek as well?

12 MS. GREENE: It is. Both sides have designated
13 portions of his deposition, but Ms. Gelfand will be reading for
14 all purposes.

15 THE COURT: So you're going to hear now from a reader
16 who's going to read Mr. Eryurek's deposition testimony to you.
17 It is not Mr. Eryurek himself.

18 MS. GUTIERREZ: Just two minutes, your Honor.

19 THE COURT: Yes.

20 MS. GELFAND: (Reading)

21 "Q. Good morning, Mr. Eryurek. When did you join Google?

22 "A. Towards the end of 2015, like third quarter.

23 "Q. OK. And what is your highest level of education?

24 "A. Ph.D.

25 "Q. And when did you receive that Ph.D.?

NAIHRow3

"Wilson"

1 "A. 1994.

2 "Q. And that was in nuclear engineering, is that correct?

3 "A. Correct.

4 "Q. And is nuclear engineering the same or different than
5 computer engineering?

6 "A. You would have to do a lot of computer, but it's
7 different.

8 "Q. OK. But it involves computations?

9 "A. Yeah.

10 "Q. And technology as well?

11 "A. Yes.

12 "Q. And do you have a master's degree?

13 "A. Yes.

14 "Q. And in what field do you have a master's degree in?

15 "A. Both from nuclear engineering departments. I was one of
16 the first artificial intelligence students in the applied
17 process and control industry. I was one of the first
18 artificial intelligent students in the domain, and my master's
19 and Ph.D. are applied in the process control part of the
20 industry, not really the nuclear side of the industry even
21 though it is for nuclear engineering.

22 "Q. So do I hear you saying that your master's was focused on
23 artificial intelligence?

24 "A. Yes.

25 "Q. And access work?

NAIHRow3

"Wilson"

1 "A. Yep, yes.

2 "Q. During the period of time that you were pursuing your
3 Ph.D., were you employed?

4 "A. Graduate student.

5 "Q. What was your first post-graduate job?

6 "A. Emerson Process Control.

7 "Q. And when was that?

8 "A. 1994.

9 "Q. What was your position at Emerson Process Management?
10 What position did you start in?

11 "A. I started as senior engineer.

12 "Q. And what was the last position you held at Emerson?

13 "A. Director. I was the director of technology.

14 "Q. And what did the director of technology role entail?

15 "A. I was responsible for strategies and for developments and
16 group of engineers and product managers that drove that
17 strategy and product development efforts.

18 "Q. Product development efforts?

19 A. Yes, which we now call it IOT. Emerson was ahead of its
20 game, and I was part of that innovative team that changed the
21 analog technologies and switched it to digital technologies.

22 "Q. What was the size of the team that you oversaw?

23 "A. Probably — I'm trying to remember exactly in — in teams,
24 like 20, 30 directs, and then I had a lot of influential — as
25 a senior leader of the division, I had a lot of influential

NAIHRow3

"Wilson"

1 roles in the metrics organization on all of the divisions
2 because plant web was the strategy. So it involved a lot of
3 the divisions. I had a lot of indirect relationships,
4 influences.

5 "Q. Why did you leave Emerson?

6 "A. I was focused on technology for most of my career. I
7 wanted to learn more about running a business and GE was able
8 to convince me to take a GM role, and although it had a lot of
9 technology in it, it was also a business that I could run. And
10 it was a turnaround job fixing up a product platform and
11 growing it, and so forth.

12 "Q. And that was in GE Transportation, is that right?

13 "A. I started in GE Transportation, correct.

14 "Q. And what was the size of the team that you oversaw in GE
15 Transportation?

16 "A. Hundreds. Hundreds of people in multiple places, global
17 teams. India, China, the rest of North America, UK, Italy.

18 "Q. And what was the next position you held at GE?

19 "A. Then I was brought in as the chief technology officer for
20 the health care IT business units, which at the time, I think,
21 like 1 1/2 billion. And soon after that I became the senior VP
22 and CTO of all the GE HealthCare software, which was
23 \$20 billion units of GE, and I had a very large team,
24 2,000-some-odd people.

25 "Q. And is GE HealthCare a division or business unit of GE?

NAIHRow3

"Wilson"

1 "A. Yes.

2 "Q. What did the role of chief technology officer in GE
3 HealthCare involve?

4 "A. I was the last single-most responsible person for all
5 digital technologies of GE HealthCare and all its products,
6 from diagnostic imaging to hospital EMRs.

7 "Q. Prior to joining Google, had you worked with or been
8 involved with Google Cloud in any way?

9 "A. No, only evaluation as a cloud partner.

10 "Q. Did GE or any of your other employers use Google Cloud —

11 "A. No.

12 "Q. — as a provider?

13 "A. No.

14 "Q. How did it come to be that you left GE?

15 "A. I had, if you look at my career, 12 years in each company.
16 And after building a strong team and large team and achieving
17 what we had achieved as a team, because if you look at still,
18 health care is the most profitable division of GE, and it was
19 time for some change and maybe better work-life balance. And
20 when Google approached me, how can you say no to Google? I
21 became a cool dad overnight.

22 "Q. At the time they reached out to you, did they indicate
23 that the role in OCTO was a director-level role?

24 "A. Yes.

25 "Q. Did they say what the level itself would be?

NAIHRow3

"Wilson"

1 "A. No. I learned in my first days, but I didn't really care.

2 "Q. OK. Other than the recruiter, do you recall anyone else
3 that you spoke with in the recruitment process?

4 "A. Yes. I talked to Will.

5 "Q. And are you referring to Will Grannis?

6 "A. Yes.

7 "Q. How many times did you talk to Will in the recruiter's
8 office?

9 "A. A few times. Not too many.

10 "Q. Did Mr. Grannis share anything with you about what the
11 role would entail or what the responsibilities of the role
12 would be?

13 "A. He was very forthcoming, and I had to be very comfortable
14 with ambiguity. That was the greatest insight he could have
15 shared with me.

16 "Q. At the time they were recruiting you, did they have any
17 technical directors in OCTO?

18 "A. No, I was it.

19 "Q. Were you the first to be hired into that role?

20 "A. Yes, externally.

21 "Q. Was there any discussion around how your experience in the
22 health care industry was relevant to the role?

23 "A. Not specifically. Not specifically. I wasn't going to be
24 hired into health care only. I was hired into the role because
25 of my very senior background that establishes instant

NAIHRow3

"Wilson"

1 credibility with customers.

2 "Q. What do you recall discussing in the recruitment process
3 related to your background?

4 A. Kind of walking through what I did, how I did it, how I
5 interacted with people, my IQ and EQ.

6 "Q. Anything else you recall being discussed with respect to
7 your background?

8 "A. That it was impressive to them and that I would be the
9 most-experienced enterprise technical director CTO. And at the
10 time we didn't have any expertise from enterprises, so I was
11 bringing quite a bit of that from various verticals.

12 "Q. OK. We're going to look at Exhibit P3.

13 "Looking at this job description, at some point in
14 time after you joined, does this accurately reflect the role
15 that you were going to play?

16 "A. Can you clarify this?

17 "Q. Sure. Let's focus on the end of 2016.

18 "As of the end of 2016, was this an accurate
19 description of what the role looked like at this period in
20 time?

21 "A. Yes.

22 "Q. Do you know whether there was a different job description
23 for people who were being hired at Level 8 as compared to
24 Level 9?

25 "A. Not that I know of.

NAIHRow3

"Wilson"

1 "Q. In the staff meetings, was there any discussion of the
2 distinction between directors at Level 8 versus directors at
3 Level 9?

4 "A. No.

5 "Q. Do you know what ladder you were on as a technical
6 director in the office of the CTO?

7 "A. It had its own ladder, TSC or something.

8 "Q. Is that technical solutions consultant?

9 "A. Something like that.

10 "Q. Do you know whether Google hired other technical solutions
11 consultants in OCTO?

12 "A. Yes.

13 "Q. And who were the other — I'm going to say TSCs — who
14 were the other TSCs in OCTO during the time period you were
15 there?

16 "A. Everyone was in that ladder.

17 "Q. Who were the other director-level individuals in OCTO on
18 the TSC ladder during the time period you were there?

19 "A. So everybody had technical director titles to — to my
20 knowledge, and that would include myself, Ben, Ulku — whole
21 bunch of others — Brian and Jeff, Jonathan, quite a few. I
22 mean, the team was big when I — when I left the team.

23 "Q. Did it include Nic Harteau?

24 "A. Nic was one of the latest hires that we had, yes. I was
25 there, and then we almost — I simultaneously left at about the

NAIHRow3

"Wilson"

1 same time.

2 "Q. What about Paul Strong?

3 "A. Yes, he was there too.

4 "Q. And by —

5 "A. And he is there.

6 "Q. And by Jonathan, were you referring to Jonathan Donaldson?

7 "A. Yes.

8 "Q. And does Ben refer to Ben Wilson?

9 "A. Yes.

10 "Q. Who did you report to in your position as technical
11 director?

12 "A. Will.

13 "Q. And that's Will Grannis?

14 "A. Yes.

15 "Q. Did you have, I think you mentioned earlier, staff
16 meetings or team meetings with Will Grannis?

17 "A. Yes.

18 "Q. Who else participated in those team meetings with you?

19 "A. Everyone.

20 "Q. All the other technical directors?

21 "A. The entire OCTO team. We were very inclusive.

22 "Q. Going back to your other prior experience, in what roles
23 did you work in cloud-based technology?

24 "A. In GE HealthCare, I was the cloud's champion for the
25 health care industry, and I had to put solutions on both

NAIHRow3

"Wilson"

1 issues. And in my last releases of what we call GE Health
2 Cloud, it was on AWS, and so I used both of them.

3 "Q. So how many years of experience had you had with
4 cloud-based technology at the time you joined Google?

5 "A. As an evangelist, probably eight years or so easily. And
6 I had managed and deployed my solutions, either on my own cloud
7 data centers or somebody else's cloud data centers. So
8 hands-on experience goes back to my GE Transportation days, so
9 from 2005 to now.

10 "Q. OK. So going back to the discussion of your role in OCTO,
11 who did you consider to be your peers in OCTO?

12 "A. Everyone was a peer.

13 "Q. With respect to — let me ask you this: Who amongst the
14 other people in OCTO were performing similar roles to what you
15 were?

16 "A. Just about everyone.

17 "Q. Does that include Ms. Rowe?

18 "A. Yes.

19 "Q. With respect to the other technical directors in OCTO,
20 would directors collaborate with each other?

21 "A. Yes.

22 "Q. In what ways?

23 "A. Sometimes I needed help, they would come in. Sometimes
24 they had deeper knowledge in some specific area like
25 networking, and I would call Brian, and what have you.

NAIHRow3

"Wilson"

1 "Q. Would directors ever fill in for each other on speaking
2 engagements?

3 "A. Constantly.

4 "Q. What about with respect to client engagements? Would one
5 director ever assist another director with a client engagement
6 or substitute for a director for a client engagement?

7 "A. All the time.

8 "Q. At the time the other technical directors were hired, do
9 you know the levels of the other technical directors?

10 "A. No.

11 "Q. Did you participate in the hiring process for other
12 technical directors?

13 "A. Only as an interviewer.

14 "Q. With respect to any of the people you interviewed, were
15 you asked to evaluate whether they should be hired as a Level 8
16 or a Level 9?

17 "A. No.

18 "Q. Did you evaluate whether they should be hired as a Level 8
19 or a Level 9?

20 "A. No.

21 "Q. Was that something you were thinking about at all at the
22 time —

23 "A. No.

24 "Q. — that you were interviewing them?

25 "A. No.

NAIHRow3

"Wilson"

1 "Q. Were you provided any criteria with which to evaluate
2 whether they should be a Level 8 or a Level 9?

3 "A. No.

4 "Q. Were you provided with any factors to consider in the
5 interview process to allow anyone else to evaluate whether they
6 should be a Level 8 or a Level 9?

7 "A. No.

8 "Q. With respect to the other technical directors, did you
9 know any of their levels?

10 "A. Not unless if they volunteered, and I never asked.

11 "Q. So during the time you were in OCTO, you did not know the
12 levels of most of the other technical directors?

13 "A. No, I didn't, and I didn't care.

14 "Q. Are you familiar with the term 'verticals'?

15 "A. Oh, yes.

16 "Q. As that term is used as Google?

17 "A. Yes.

18 "Q. What do you understand 'verticals' to mean?

19 "A. Industry verticals.

20 "Q. And at the time you were being recruited, were there any
21 discussions around what your role would look like with respect
22 to the verticals?

23 "A. No.

24 "Q. Was there any talk about verticalization at that time?

25 "A. No.

NAIHRow3

"Wilson"

1 "Q. Among the directors, the technical directors, were there
2 certain technical directors who were recognized as having sort
3 of an expertise in particular verticals?

4 "A. It was very clear to them that I had health care
5 backgrounds, not to mention my process control in
6 transportation, but from the focus area, health care was there,
7 finance, retail, oil and gas, media.

8 "Q. And who were the technical — who was the technical
9 director with expertise in finance?

10 "A. Ulku. She was hired with that background. But, again, I
11 had a lot of bank customers that I brought into Google Cloud.
12 I've done that too.

13 "Q. OK. We're going to look at Plaintiff's Exhibit 139.

14 "Do you recognize this document?

15 "A. That is my job offer, right?

16 "Q. Yes. And if you turn to the final page of this document,
17 is this the job offer that you executed?

18 "A. Seems like it.

19 "Q. OK. And looking back at your sign-on bonus, did you
20 receive a one-time cash payment of \$265,000?

21 "A. Yes.

22 "Q. Do you know how Google determined the amount of your cash
23 sign-on bonus?

24 "A. Yes.

25 "Q. How?

NAIHRow3

"Wilson"

1 "A. Because I was leaving a lot of money. If you look at the
2 timing, I think it was October, right, going back to — and I
3 would be leaving quite a bit of my bonus behind, and this was
4 their way of helping me meet that cash flow gap.

5 "Q. Did they explain anything else to you with respect to how
6 they arrived at that number?

7 "A. No.

8 "Q. Looking at the equity compensation piece of this, it says
9 you will be granted two equity awards of restricted stock
10 units. The first award will be a grant of 4,100 GSU. Do you
11 see that?

12 "A. Yes.

13 "Q. Do you recall what the Google stock value was at the time
14 this grant was made?

15 "A. Seven, \$800.

16 "Q. Do you recall what this award translated to in value at
17 the time it was awarded?

18 "A. The amount of money closely — 'closely' being the
19 operative word — that I would leave behind at GE.

20 "Q. Do you remember if it was more or less than what you were
21 leaving behind?

22 "A. I — I think I left more behind, but I don't exactly
23 remember the amounts. You know, I — I felt good enough with
24 the offers and what I was getting into. At that moment it was
25 an easy decision for me to make mentally.

1 NAIHRow3

2 "Wilson"

1 "Q. And there's also a second grant award in an aggregate
2 amount equal to \$450,000. Do you see that?

3 "A. Yes.

4 "Q. Do you know how that amount was determined?

5 "A. Because they — they realized how much money I was leaving
6 behind, and so that was sort of their attempts to help me out.

7 "Q. Just so we're clear, you never requested a particular
8 level, correct?

9 "A. No.

10 "Q. At the time you were being hired, nobody told you what the
11 levels of the other technical directors might be, correct?

12 "A. No.

13 "Q. In the office of the CTO, did you ever work with Ulku
14 Rowe?

15 "A. Yes.

16 "Q. In what capacity did you have an opportunity to work with
17 her?

18 "A. In external events, joint presentations, analyst events
19 that we presented, and sometimes I pulled her into an executive
20 briefing that I could use her help. Sometimes she pulled me
21 into some meetings that she could help me out — I could help
22 her out.

23 "Q. I know some of these are very obvious questions, but,
24 again, we have to get it for the record.

25 "What was your understanding of Ms. Rowe's role at the

NAIHRow3

"Wilson"

1 time?

2 "A. She was a technical director in the office of the CTO.

3 "Q. So she was in the same role that you were in?

4 "A. Yes. We were all in the same role.

5 "Q. Did you at some point in time learn what her educational
6 background was?

7 A. During our personal conversations, we would chitchat, you
8 know, which schools we went, our families, and so forth.

9 Casual.

10 "Q. What did you understand about her educational background?

11 "A. That in — in — that — not in too many specific details
12 that, you know, she understood the domain, technical domain
13 that we were in, and that she had worked in the IT world of
14 fintech, and she understood how it works and how banks are
15 structured and how they operate, and so forth.

16 "Q. Did you know that she had a bachelor's and a master's in
17 computer-related technology?

18 "A. I believe she told me, but I don't remember exactly where
19 she got it, and so forth.

20 "Q. In your work with her, did you find her to be
21 professional?

22 "A. Very.

23 "Q. Did you find her to be knowledgeable?

24 "A. Yes.

25 "Q. Was she knowledgeable with respect to financial services?

NAIHRow3

"Wilson"

1 "A. Yes.

2 (Continued on next page)

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NAIVROW4

"Eryurek"

1 "Q. Did you find her to be knowledgeable with respect to
2 technology?

3 "A. Yes.

4 "Q. Did you find her to be knowledgeable with respect to
5 project management?

6 "A. I didn't have enough exposure to her project management
7 skills.

8 "Q. Did you find her to be effective in her role?

9 "A. Yes.

10 "Q. Did you, yourself, have any criticisms of her performance?

11 "A. No, but I wasn't her manager to criticize either, so --

12 "Q. Did you ever hear anyone else express criticisms of her
13 performance?

14 "A. No.

15 "Q. Did you know her level?

16 "A. Not until very late when she disclosed it to me.

17 "Q. Did she seem upset that she was an L8?

18 "A. No.

19 "Q. Did you have any role in determining what her level was?

20 "A. None.

21 "Q. Did you ever discuss with anyone the reasons for what her
22 level was?

23 "A. No.

24 "Q. I think you said that you could see why was the phrase you
25 used, why she was an L8?

NAIVROW4

"Eryurek"

1 "A. Yes. Compared to my years of experience, what I've done
2 and so forth, I'm sure she knew how senior I was from about the
3 conversation, so --

4 "Q. But that was just your --

5 "A. Personal, personal engagements with her as a friend.

6 "Q. Right. And that was just your opinion about why that
7 might be? You didn't know that to be the reason for why those
8 levels were different?

9 "A. Yes.

10 "Q. Correct?

11 "A. Yes.

12 "Q. Okay. At some point in time while you were in OCTO, did
13 you learn that Will Grannis was considering a reorganization of
14 the groups or the people that reported to him?

15 "A. Yes.

16 "Q. And did you hear anything about a creation of a vertical
17 group underneath him?

18 "A. Yes.

19 "Q. And did you hear that they had identified Ms. Rowe as a
20 potential leader of that group?

21 "A. Yes.

22 "Q. And what was discussed with you about that or what did you
23 hear?

24 "A. That they were contemplating should we do it this way and
25 that and so forth.

NAIVROW4

"Eryurek"

1 "Q. Anything you recall about Ms. Rowe in particular being
2 discussed in connection with the creation of that vertical
3 group?

4 "A. No.

5 "Q. Did you have any concerns about having Ms. Rowe as the
6 head of that group?

7 "A. No.

8 "Q. At that point in time, did you know what her level was?

9 "A. No, I don't believe so.

10 "Q. In your role in OCTO, what were your day-to-day
11 responsibilities? Let's focus on the 2017 time frame.

12 "A. We had some preliminary customers in various verticals,
13 and I sponsored a few large ones, including Walmart, Bank of
14 Canada, and a few healthcare programs. And I also helped GCP's
15 kind of horizontal capabilities that they really needed some
16 help on PM leadership. And I was also helping on the data
17 analytic side a little bit, which was a -- which ended up being
18 my area of focus.

19 "Q. Did you ever hear anyone describe your position in OCTO as
20 having three pillars?

21 "A. Three pillars. Can you explain what the three pillars
22 are?

23 "Q. Yes. The first is customer work, the second is
24 influencing the platform and the product, and the third is
25 speaking and evangelism.

NAIVROW4

"Eryurek"

1 "A. Yeah. Yes, that's essentially what we did.

2 "Q. Okay. At any point in time, did you move into Tariq
3 Shaukat's organization?

4 "A. Very briefly, yes.

5 "Q. And when did you learn that you were leaving OCTO?

6 "A. I think it was 2018. Again, like the dates always blur in
7 my head, but I was on -- going on a vacation, I think, in the
8 summer that this was going to happen. You know, we had heard
9 about it, but we didn't know how. And actually I made it very
10 clear that I wouldn't and -- but I wasn't given an opportunity
11 to even opt out or anything. So this happened. But I had
12 something else going on already. So it happens.

13 "Q. How long did you actually function under Mr. Shaukat or in
14 his organization?

15 "A. Don't know exactly, but weeks.

16 "Q. Had Ms. Rowe expressed anything to you with respect to
17 Mr. Shaukat's treatment of her?

18 "A. Yes.

19 "Q. What did she express to you?

20 "A. That she was frustrated, she wasn't getting any -- she
21 wasn't being included and that kind of stuff.

22 "Q. Anything else you recall her expressing to you?

23 "A. That she thought she should be considered for the role of
24 the vertical lead, and I encouraged her.

25 "Q. Did you discuss Ms. Rowe's consideration for the vertical

NAIVROW4

"Eryurek"

1 lead portion with anyone other than Ms. Rowe?

2 "A. I don't recall. Maybe Ben, because we were very close.

3 The three of us were very close.

4 "Q. Is there anything else you recall discussing with Ms. Rowe
5 with respect to the vertical lead role?

6 "A. The application and interview process and so forth.

7 "Q. Did she ever express that she felt she wasn't being given
8 fair consideration for the role?

9 "A. Yes.

10 "Q. What did she say with respect to that?

11 "A. That to her knowledge, her being put through the interview
12 process was done not appropriately, if you will. I don't know
13 what the right type words were, but she wasn't happy with it
14 and it only happened because she requested.

15 "Q. Did she say anything else with respect to Mr. Shaukat and
16 her consideration for the lead role?

17 "A. I believe we had a conversation that she had heard that
18 Tariq wants to bring VP-level person from into -- into the role
19 from outside, inside, I'm not sure where, but that was the
20 focus and that was it, I believe.

21 "Q. What did you know about Nick Harteau's background?

22 "A. That he was an engineering director at Spotify, which was
23 a customer of mine, and very good -- very capable guy.

24 "Q. Do you know what his level was during the time he was in
25 OCTO?

NAIVROW4

"Eryurek"

1 "A. No.

2 "Q. Mr. Eryurek, have you heard the term 'senior director'
3 used in OCTO?

4 "A. We never used it, no.

5 "Q. So in your recollection, the term 'director' was the term
6 that was used in OCTO?

7 "A. We all -- we all had technical directors business cards
8 and so forth.

9 "Q. Did Ms. Rowe ever tell you in sum or substance, even if
10 she didn't use those exact words, that she thought she was
11 being treated differently as a woman?

12 "A. No.

13 "Q. From what you observed about the technical director role,
14 was it years of experience that was the most relevant or the
15 type of experience that was most relevant to the job?

16 "A. Probably a combination of both. And some had a lot more
17 years, and their roles were really big and broad and so forth.
18 Some others were maybe the types of the focus areas that they
19 had and what experience that they brought in.

20 "Q. So, in other words, years of experience was not a
21 determining factor in how someone could perform as a technical
22 director?

23 "A. Remember, I told you technical director was a title that
24 just about everyone used in the team; some with a lot less
25 experience and junior roles than I did, but they still called

NAIVROW4

"Eryurek"

1 themselves technical directors, which was fine for them because
2 that's sort of -- that helps excel communications of technical
3 directors and will do it.

4 And so years of experience mattered. What you did,
5 where you did, how you did, for whom you did definitely
6 mattered. But not everyone had that same kind of template
7 experience, because we all had technical director titles, but
8 we were different levels because of the experience that we had
9 in our pasts. Some was driven by years, some was driven by
10 what we have accomplished in our prior lives.

11 "Q. And is that something that was communicated to you or
12 something that you just --

13 "A. By virtue of -- of -- by virtue of talking to people, you
14 sort of gather that.

15 "Q. With respect to directors at L8 and above, did you have
16 any basis to know what their years of experience were and how
17 that related to their leveling?

18 "A. Not really.

19 "Q. Did it have any impact on what clients they worked on?

20 "A. No.

21 "Q. Did it have any impact on what external speaking
22 engagements they might work on?

23 "A. Absolutely not.

24 "Q. Did it have any impact on what internal products or
25 projects they might work on?

NAIVROW4

Beaupain - Direct

1 "A. No.

2 "Q. With respect again to the L8 and L9 directors, did the
3 years of experience impact their day-to-day work or the role in
4 any way?

5 "A. I wouldn't have guessed so, no."

6 MS. GELFAND: No further questions.

7 THE COURT: Thank you.

8 MR. CHIARELLO: Your Honor, our next witness is April
9 Beaupain.

10 THE COURT: Okay.

11 Mr. Chiarello, I intend to give the jury a lunch break
12 at 12:30.

13 MR. CHIARELLO: Okay. Thank you, your Honor.

14 APRIL BEAUPAIN,

15 called as a witness by the Plaintiff,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. CHIARELLO:

19 Q. Good afternoon, Ms. Beaupain.

20 A. Good afternoon.

21 Q. You are currently employed at Google?

22 A. Yes.

23 Q. And in 2018/2019, what was your role at Google?

24 A. I was an employee relations partner.

25 Q. And did you participate in an investigation in connection

NAIVROW4

Beaupain - Direct

1 with a complaint made by Ms. Rowe during the 2018/2019 time
2 period?

3 A. Yes.

4 Q. And what was your role with respect to that investigation?

5 A. I was the primary investigator.

6 MR. CHIARELLO: Mr. Yang, can you please put up
7 Plaintiff's 99.

8 Q. The writing is a little small on this, but Ms. Beaupain, do
9 you recognize this document?

10 A. I do.

11 Q. Is it Google's policy on harassment, discrimination,
12 retaliation, standards of conduct, and workplace concerns for
13 U.S. and Latin-American employees?

14 A. Yes.

15 Q. Was this policy in effect at the time you investigated
16 Ms. Rowe's concerns in 2018?

17 A. Yes, it was.

18 MR. CHIARELLO: Mr. Yang, can we take a look at the
19 third page. And can we call out the area around addressing
20 concerns. Thank you.

21 Q. Ms. Beaupain, this policy states there are multiple ways in
22 which a Googler can raise or escalate a concern about improper
23 conduct under this policy, including the following:

24 You may talk to your manager, someone else in your
25 reporting chain, or any other manager outside of your reporting

NAIVROW4

Beaupain - Direct

1 chain; any human resources people partner or consultant; the
2 respect@team; and the compliance help line.

3 It's correct that an employee could use any of those
4 methods to register a concern; is that correct?

5 A. Based on what -- excuse me. Based on what you're showing
6 me, what it says, yes.

7 Q. And is it correct that those are ways that an employee
8 could raise a concern?

9 A. They are. I want to be thoughtful of at the time of -- in
10 2018, I can't recall whether, like, our compliance help line
11 was up and running; but yes, these are absolutely avenues that
12 someone can raise a concern.

13 Q. Better clarification.

14 MR. CHIARELLO: Mr. Yang, can we look above that at
15 the section that's marked "Retaliation."

16 Q. And Ms. Beaupain, this is Google's policy prohibiting
17 retaliation against employees who raise workplace concerns;
18 correct?

19 A. Yes.

20 Q. And this policy would apply to employees who raise concerns
21 of gender discrimination?

22 A. Yes.

23 Q. And it would apply to employees who raise concerns of pay
24 disparity?

25 A. Yes.

NAIVROW4

Beaupain - Direct

1 MR. CHIARELLO: Mr. Yang, can we take a look at the
2 fourth page of this document. And I want to call out the top
3 part of how a concern is handled. Not just the header, the
4 first two paragraphs underneath that.

5 Q. And while he's doing that, Ms. Beaupain, it was employee
6 relations' responsibility to investigate complaints of
7 discrimination; correct?

8 A. Yes, that's correct.

9 Q. Drawing your attention to the bottom paragraph,
10 Ms. Beaupain, it says: We'll also gather information about the
11 issue. To do that, we'll need to talk with you. During the
12 meeting there will generally be two members of the
13 investigations team in the room, one person will be taking
14 notes.

15 This is with respect to the complainant, but was it
16 also employee relations' policy to have two individuals in the
17 room for any interview?

18 A. Typically, that would be our approach. There could be
19 one-off exceptions to that, so I don't want to say they
20 unilaterally apply, but that was definitely best practices to
21 have two of the employee relations members in an interview or
22 in a discussion, yes.

23 Q. And was also the practice to have a person taking notes of
24 the interview?

25 A. Yes. I mean, again, there's always exceptions. I don't

NAIVROW4

Beaupain - Direct

1 know if this was actually just being thoughtful of this
2 language. I don't know when that was added as part of the
3 process or policy here. I don't know if it was in effect.
4 This has changed and grown as Google has grown, so I can't say
5 for sure that this was in the process in 2018. But that was
6 ER's practice where it made sense to have two individuals in
7 the interview when speaking with people.

8 Q. Okay. I just want to clarify. I thought you had said this
9 policy was in effect in the 2018/2019 period?

10 A. Thank you. Let me clarify.

11 The policy was in effect. Some of the details, how a
12 concern is handled, may have grown and changed as Google has
13 grown and our processes have grown.

14 Q. But it was the practice during the time Ms. Rowe's
15 complaint was investigated; correct?

16 A. Yes. Typically, we would have two people when conducting
17 an interview.

18 MR. CHIARELLO: Mr. Yang, you can take this down.

19 And can you please put up Plaintiff's 114. And I
20 guess just scroll through it so the witness can take a look.

21 Q. Ms. Beaupain, are you familiar with this document?

22 A. Mildly familiar, yes.

23 Q. It's a guide created by Google; is that correct?

24 A. I believe so, yes.

25 Q. And it's to assist employee relations when investigating

NAIVROW4

Beaupain - Direct

1 complaints?

2 A. That's my understanding, yes.

3 MR. CHIARELLO: Mr. Yang, can we take a look at the
4 fourth page of this document.

5 Q. This page in the second column lists different types of
6 discrimination; correct?

7 A. That's what it looks to be, yes.

8 Q. And if we look at the second row from the bottom and where
9 that intersects with the fourth column examples.

10 MR. CHIARELLO: If you could call that out, Mr. Yang.

11 Q. These are examples of possible discrimination that Google
12 is highlighting; correct?

13 A. Yes.

14 Q. And one of those examples is offering women and men
15 different rates of pay or benefits for the same job; correct?

16 A. Yes.

17 MR. CHIARELLO: Mr. Yang, can we move on to page 6.

18 Q. And on this page we're looking at categories of retaliation
19 or retribution; correct?

20 A. Yes.

21 Q. In the row that's labeled "Protected Activity," I want to
22 look at the examples of that row.

23 MR. CHIARELLO: And Mr. Yang, can you, yes, call out
24 just the bottom portion there.

25 Q. So in discussion of what an adverse impact could be, Google

NAIVROW4

Beaupain - Direct

1 identified as an example: Can also mean being excluded from
2 opportunities that you otherwise wouldn't have been excluded
3 from, like meetings with clients and other important
4 stakeholders. Correct?

5 A. Yes.

6 Q. The guide says.

7 And it also offers an additional example: A manager
8 was found to have provided information to a hiring manager
9 about a Googler raising concerns, we assume in the attempt to
10 deter the hiring manager from hiring them. The act of trying
11 to prevent someone from being hired would be adverse action,
12 even if there was no actual impact, i.e., person got hired
13 anyway.

14 Do you understand these both to be examples of things
15 Google would consider retaliation?

16 A. They're provided in this as an example. On their face,
17 that would look at the concern and understand kind of the --
18 what led to it, understand the motive. But actually this is an
19 example that's called out if it was motivated for retaliatory
20 purposes.

21 Q. Okay. Ms. Beaupain, do you know whether the examples in
22 this guide are based on real situations encountered at Google?

23 A. I can't speak to that. I didn't create this doc, so I
24 can't speak to that.

25 Q. Okay.

NAIVROW4

Beaupain - Direct

1 MR. CHIARELLO: Mr. Yang, can we look at the eighth
2 page, please.

3 Q. And this page deals with unfair treatment; correct?

4 A. Yes.

5 Q. Five rows down there's a row identified as unfair leveling
6 at hire. Do you see that?

7 A. I do.

8 MR. CHIARELLO: And Mr. Yang, if you can call out the
9 two boxes. Great. I want to look at the box on the right.

10 Q. So this is notes/regional nuances. And it says:

11 Typically, these would be looked into by PPs/and PCs. What are
12 PPs and PCs?

13 A. It's what we refer to generally as human resources at
14 Google. And they actually break it down into people partners
15 and people consultants.

16 So people partners are typically aligned to, like,
17 leaders and strategically work with them. And people
18 consultants are typically involved with kind of the more
19 general concerns or general guidance for Googlers, like if they
20 need help with leave or performance questions. So that's just
21 how it's broken out.

22 Q. It goes on to state: However, discrimination related to
23 level may not be substantiated, but we do find the level was
24 unfair or not in alignment with Google processes for job
25 ladder. In that case, please note you substantiated "unfair

NAIVROW4

Beaupain - Direct

1 leveling at hire" and did not substantiate "discrimination –
2 Level." Additionally, if there's a concerned re
3 discrimination, ER -- that's employee relations? Ms. Beaupain,
4 "ER" is employee relations?

5 A. Yes. Sorry. Thank you.

6 Q. Okay. Would look into it, and this category may be used if
7 discrimination related to level is not substantiated, but we do
8 find the level was unfair or not in alignment with Google
9 processes for job level.

10 Do you understand, Ms. Beaupain, if there is a finding
11 that there was an unfair leveling, whether or not it's related
12 to discrimination, that Google had a process to adjust or
13 correct the level?

14 A. I'm making sure I understand the question. Was there a
15 process in place if there was a finding of unfair leveling, is
16 that the question?

17 Q. Yes. So assuming employee relations does an investigation,
18 determines that there is leveling that was unfair, Google has a
19 process to correct that unfairness?

20 A. I can't speak to the specific process that's in place, but
21 if we did during the course of our investigation find that
22 there was unfair leveling, that's my understanding is we would
23 take steps to help correct that.

24 Q. I want to talk specifically about your role now in
25 Ms. Rowe's complaint.

NAIVROW4

Beaupain - Direct

1 THE COURT: Mr. Chiarello, do you want to start that
2 now? It's 12:26. It sounds like it might be a segment.

3 MR. CHIARELLO: It is a new area.

4 I'm happy to break here.

5 THE COURT: I think that makes sense.

6 MR. CHIARELLO: Okay.

7 THE COURT: All right. Now, Ms. Williams, we're going
8 to have some technical assistance during the lunch break,
9 right? I just need to factor that into the amount of time
10 we're going to be out of here.

11 Members of the jury, let's break for lunch now and
12 return at five minutes after one. And during the lunch break,
13 please do not speak to each other or anyone else about the
14 case. Do not do any research on the case. And please remember
15 to make use of the facilities in the jury room and not use the
16 public rest rooms where you might encounter lawyers, witnesses,
17 etc.

18 All right.

19 (Jury not present)

20 THE COURT: You may step down now. Thank you.

21 (Witness not present)

22 (Luncheon recess)

23 (Continued on next page)

24

25

NAIVROW4

Beaupain - Direct

1 A F T E R N O O N S E S S I O N

2 1:10 P.M.

3 THE COURT: Ms. Williams, let's bring in the jury
4 please.

5 (Jury present)

6 THE COURT: Ms. Beaupain, I remind you that you're
7 still under oath.

8 THE WITNESS: Yes, your Honor.

9 BY MR. CHIARELLO:

10 Q. Ms. Beaupain, do you recall prior to the break we were
11 talking about Google's policies with respect to correcting
12 under-leveling at hire?

13 A. Yes.

14 MR. CHIARELLO: Mr. Yang, can you please put up
15 Plaintiff's 105.16 Q. Ms. Beaupain, if you can take a look at the first page.
17 And if you feel like you need to look further into this
18 document, let me know.

19 A. Okay.

20 Q. Ms. Beaupain, is this an example of a time in which
21 employee relations adjusted a female employee's level following
22 a complaint of under-leveling?23 A. So I don't recall this doc or if this is one that's
24 related, something I worked on based on what's discussed. I do
25 see discussions about levels though.

NAIVROW4

Beaupain - Direct

1 Q. And taking a look at this second bullet from the bottom,
2 there's a note: We are adjusting to Level 7, backdating to
3 when blank started in KAE role.

4 So does that indicate to you that this individual's
5 level was adjusted and backdated to the time they started in
6 the role?

7 A. Yes.

8 Q. I want to talk a little bit about your role in the
9 investigation of Ms. Rowe's complaint.

10 MR. CHIARELLO: Mr. Yang, can we put up Plaintiff's
11 57, please.

12 Q. Ms. Beaupain, do you recognize these to be the interview
13 notes made in connection with the interviews around Ms. Rowe's
14 complaints --

15 A. I do, yes.

16 Q. -- in 2018?

17 A. Yes, I do.

18 Q. You're familiar with this document?

19 A. Yes.

20 Q. And to your knowledge, everything in this document is
21 accurate?

22 A. Yes, it would be accurately reflecting the notes that were
23 taken at the time.

24 Q. Is it correct that the only person you interviewed in
25 connection with that complaint besides Ms. Rowe was Jennifer

NAIVROW4

Beaupain - Direct

1 Burdis?

2 A. Yes.

3 Q. And you didn't interview any of the Level 9 men Ms. Rowe
4 was comparing herself to, right?

5 A. I did not.

6 Q. You didn't interview Will Grannis?

7 A. I did not.

8 Q. And you did not interview Brian Stevens?

9 A. I did not.

10 Q. In addition to the interview of Ms. Burdis, did you also
11 review data that Kevin Lucas had put together with respect to
12 degrees and years of experience for the individuals, the
13 technical directors in OCTO?

14 A. Yes, I did.

15 Q. And did you take any steps to verify with anyone whether
16 those two factors, meaning years of experience and degrees,
17 were actually used in the leveling decisions when Ms. Rowe was
18 hired?

19 A. I spoke to Jenny Burdis, who is the recruiter in staffing,
20 to better understand the process and what had been taken into
21 consideration.

22 Q. And did she tell you that years of experience and degrees
23 were the basis for the leveling decisions?

24 A. Not in those words, no. She explained they were
25 considerations and factors when determining level.

NAIVROW4

Beaupain - Direct

1 Q. Okay. Other than speaking with Ms. Burdis and reviewing
2 the data that Mr. Lucas provided, did you do anything else as
3 part of your investigation?

4 A. I would have -- I spoke to, I believe, Kevin Lucas from HR
5 to better understand, kind of, steps he'd taken and what he'd
6 done. I would have spoken to colleagues to make sure we are
7 coming from a consistent -- consistent front in what we do in
8 steps we take as far as an investigation. Reviewed the data,
9 reviewed any relevant documentation or emails, spoken with
10 relevant people who would provide relevant information.

11 Q. I'm sorry, did you finish?

12 A. I think I did, yes.

13 Q. When you say "reviewed relevant documentation or emails,"
14 what specifically are you referring to?

15 A. In general, it would have been steps taken. So if there's
16 emails that were, you know, related to the concern, HR provide
17 any additional background or emails, I would have reviewed
18 those. Just kind of any relevant information that was provided
19 to us in connection to the concern raised.

20 Q. And as you sit here today, can you think of any documents
21 or emails you reviewed besides the data that Mr. Lucas provided
22 as part of your investigation?

23 A. I would have -- I believe there are some emails that HR
24 provided me kind of to show to understand the concerns that
25 were raised or any steps that were taken prior to it coming to

NAIVROW4

Beaupain - Direct

1 me.

2 Q. I think you said you might have spoken with other
3 individuals. Do you recall speaking with anyone other than
4 Ms. Burdis and Ms. Rowe as part of your investigation into this
5 complaint?

6 A. I did speak to Kevin Lucas. He was the individual in HR
7 who originally raised the concern.

8 Q. Okay.

9 MR. CHIARELLO: Mr. Yang, can we take a look at the
10 second page of Plaintiff's 57. And I want to call out right in
11 the middle. That's right. You have it.

12 Q. So there's a note here from your interview with Ms. Burdis
13 that says: I feel at Google there's a ton of grey areas
14 between the levels anyway. We take a lot of measures to make
15 sure the leveling is correct, many layers of review. But there
16 will always be that tiny margin that's grey.

17 That's something that Ms. Burdis had said in the
18 interview to you; correct?

19 A. I don't recall if those exact words were spoken, but they
20 reflect in the notes, so she would have said something to that
21 effect, yes.

22 Q. And --

23 MR. CHIARELLO: You can take that down, Mr. Yang.

24 Q. In the notes --

25 MR. CHIARELLO: I'm sorry, keep up that page,

NAIVROW4

Beaupain - Direct

1 Mr. Yang, but just not the call-out.

2 Q. There's nothing in these notes that suggests Ms. Burdis
3 explained why Ms. Rowe had been leveled as a Level 8 as opposed
4 to a Level 9; correct?

5 A. I'm not sure I understand the question.

6 Q. Did Ms. Burdis provide you with an explanation as to why
7 Ms. Rowe had been leveled as a Level 8 and not a Level 9?

8 A. We did -- we did discuss that during the interview, yes.

9 Q. Can you point to where that is in the notes?

10 A. We talked about the general levels.

11 So if I'm understanding you correctly, it's whether we
12 talked about Ms. Rowe, what kind of leveling in general. But
13 we did discuss, kind of, the general number of years that a
14 director would have. So I think she mentioned, like,
15 potentially 17 to 20 was like a general amount of years of
16 experience she would see when looking at directors. I think it
17 was like 25 plus, typically, like -- excuse me, take a step
18 back. Directors are L8 and L9 roles.

19 So for L8s, typically like 17 to 20 years -- 17 to 20
20 years or so. Like 25-plus years would be like an L9. And
21 those were not necessarily hard and fast, but those were
22 typically what would be seen for years of experience.

23 We talked about -- want to refresh my recollection?
24 We talked about, I think, conversation she had had with
25 Ms. Rowe about the leveling.

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Beaupain - Direct

1 Does that answer your question?

2 Q. Sure.

3 Is there anything in the notes that reflects
4 Ms. Burdis telling you that Ms. Rowe -- or that L9 men had a
5 stronger tech background versus her tech background?

6 A. I seem to recall we talked about L9s; if individuals were
7 L8 versus L9, some of the factors that could be considered, not
8 only their years of experience, but like the type of
9 experience. And I'm not quite remembering whether it was the
10 conversation with Jenny Burdis or the data that I reviewed in
11 making that connection, but I do remember that we discussed
12 that.

13 So for instance, someone might have years of
14 experience that were kind of general years of experience, that
15 we're playing into that L8 role. But someone might have very
16 specific, like, technical experience or Google Cloud product
17 experience, and that might very specific translatable
18 experience. That might be a consideration why they come in as
19 an L9 versus an L8.

20 Q. Is there anything in these notes that reflects anything
21 around what Ms. Burdis understood to be Ms. Rowe's tech
22 background?

23 A. I don't recall if it's in the notes. I recall that like
24 these were discussions and we talked about these things. I'm
25 happy to read through the notes specifically though, if you're

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Beaupain - Direct

1 asking me to identify it in the page in front of me.

2 Q. If it would be helpful, please feel free to take a look.

3 A. Just to be clear, you're asking me if something was in the
4 notes doc. I want to be clear I'm looking for what's in the
5 notes doc or what I remember, like, the discussion, the
6 investigation to be?

7 Q. Well, let's start with what's in the notes. Is there
8 anything reflected in the notes regarding a conversation with
9 Ms. Burdis about Ms. Rowe's tech background?

10 A. She does refer to the banking background, that Ms. Rowe
11 came from a banking background. So that was something that
12 referenced, and I recall that from the conversation.

13 Q. Okay. Is there anything in your conversations with
14 Ms. Burdis that is not recorded in this document with respect
15 to Ms. Rowe's tech background that you discussed?

16 A. I do recall it coming up kind of the type of experience and
17 that being a factor in what might differentiate someone coming
18 in as an L8 versus L9. And some of the considerations being,
19 kind of, a general experience, the background, versus
20 translatable skills. So like the tech experience versus the
21 general experience or that Google Cloud product experience.
22 And I'm sorry, I can't remember whether it's in the notes, but
23 I do recall that being part of the investigation and part of
24 the findings.

25 Q. Did you do any independent research into what Ms. Rowe's

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Beaupain - Direct

1 qualifications were?

2 A. Any independent research. I reviewed the data that was
3 shared with us. I worked with our analyst to ensure that data
4 was accurate, what was in the systems, not just relying on kind
5 of the data that HR pulled. And I think that was reflected in
6 the data that I reviewed.

7 So it would be understanding that she came from a
8 financial background, might have focused on cloud or tech, but
9 it was a financial background. But other than relying on the
10 data that was provided, speaking with an analyst on my team,
11 and then if it came up in conversation with Ms. Rowe, I don't
12 recall taking any additional steps during the investigation.

13 Q. And all your conversations with Ms. Burdis on this matter
14 are reflected in these notes; correct?

15 A. The date that I spoke with her is reflected in these notes.
16 These notes aren't meant to be verbatim; they are meant to help
17 the memory; they are meant to help kind of capture key or
18 material information. But it wouldn't have captured, like,
19 everything in our conversation, if that's what you're asking.

20 Q. Yeah. So I'm just asking a separate question. There are
21 no conversations beyond those identified in here that you had
22 with Ms. Burdis?

23 A. I don't recall any.

24 MR. CHIARELLO: Mr. Yang, let's look at page 3.

25 Q. Ms. Beaupain, you're aware that there were five men that

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Beaupain - Direct

1 had been leveled as Level 9 technical directors in OCTO;
2 correct?

3 A. Yes.

4 Q. And according to these notes, Ms. Burdis only discussed
5 three of those individuals with you: Nick Harteau, Evren
6 Eryurek, and Jonathan Donaldson; correct?

7 A. If that's what the notes reflect, that, like, would have
8 been the case, yes.

9 Q. And that discussion you had with Ms. Burdis, she was doing
10 that mostly from memory?

11 MS. TOMEZSKO: Objection. Foundation. And it's also
12 leading.

13 THE COURT: I'll allow it.

14 A. I can't -- I wasn't in person with Ms. Burdis, I don't
15 think. If I recall, she was looking up something, I think
16 that's referenced in the notes earlier, that she's going into
17 the system and looking up -- I just don't recall what she was
18 looking up, but it had to do with the questions I was asking
19 her. So it would have been based on memory and whatever else
20 she was looking at at the time.

21 Q. Okay. And with respect to Mr. Eryurek, there's a note
22 that: I don't have access to his gHire, and I assume that
23 means Ms. Burdis did not have access to his gHire; correct?

24 A. Can -- is that --

25 Q. So the second black bullet is Evren Eryurek. And three

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Beaupain - Direct

1 bullets down from that there's a note that says: I don't have
2 access to his gHire.

3 A. Then yes, that's -- I would -- I would rely on what's
4 captured there.

5 Q. And based on these notes, is it accurate to say that you
6 didn't discuss either Ben Wilson or Paul Strong with
7 Ms. Burdis?

8 A. I don't recall. If it's not in the notes, then I can't
9 recall. This is five years ago. I would rely on what's
10 captured in the notes.

11 Q. And I just want to call out under Jonathan Donaldson, the
12 second bullet, there's a note: Will Grannis SOS endorsed Level
13 9 hire, addressed the leaning higher recommendations in the
14 interview feedback.

15 Will didn't actually explain in detail why he
16 supported an L9 hire. That is a note from your conversation
17 with Ms. Burdis; correct?

18 A. Yes.

19 MR. CHIARELLO: We can take that down.

20 And Mr. Yang, if you can put up Plaintiff's 89.

21 Q. Ms. Beaupain, do you recognize this to be your talking
22 points drafted for your conversation with Ms. Rowe about the
23 outcome of the employee relations investigation?

24 A. Yes.

25 (Continued on next page)

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Beaupain - Direct

1 BY MR. CHIARELLO:

2 Q. And these are the — did you rely on this script when you
3 spoke to Ms. Rowe?

4 A. Yes, I did.

5 Q. I want to take a look at the seventh bullet down. It's the
6 one that has some highlighting on it already. It says: "Tech
7 versus non-tech experience was the most heavily considered
8 factor when gauging L8 versus L9 for similar years of work
9 experience. Is this appropriate to articulate in a closing if
10 pressed by Googler?"

11 My question is, were you asking to confirm because you
12 yourself did not know whether that was a factor Google was
13 relying on to distinguish Ms. Rowe from the Level 9 men?

14 A. No.

15 Q. No, that's not why you asked?

16 A. No, that's not why that's referenced there, no.

17 Q. What was the purpose of the question to ask is it
18 appropriate to articulate in closing if pressed by the Googler?

19 A. This is a reminder to myself. So when we're writing out
20 talking points, typically, we're going to have, if they're very
21 sensitive cases or for various reasons — sorry, my voice is
22 going — we'll capture questions there, things to flag to
23 ourself. I remember this one in particular as well we were
24 working with counsel, and it was a sensitive matter, like —
25 this one in particular based on the leveling, I just wanted to

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Beaupain - Cross

1 make sure I was being consistent with how we typically close
2 out leveling questions. And I wasn't sure whether — like, how
3 much to go into detail-wise when closing out individuals.

4 So that was more of a flag to me to check with — I
5 just don't remember if it was my lead at the time or legal just
6 to make sure how much detail to go into at the time. That's
7 just a facet of how detailed to go into closing arguments —
8 closing discussions with individuals that raise concerns. We
9 want to provide very high level, address their concerns, but
10 not necessarily go into all the details of the entire
11 investigation.

12 THE COURT: Get some water for the witness, please.

13 THE WITNESS: Thank you.

14 MR. CHIARELLO: I have nothing further.

15 THE WITNESS: Thank you so much.

16 CROSS-EXAMINATION

17 BY MS. TOMEZSKO:

18 Q. Good afternoon, Ms. Beaupain.

19 A. Good afternoon.

20 Q. Before we get into the substance of your investigation,
21 could you describe for the jury a little bit about your
22 background at Google and your background prior to joining
23 Google.

24 A. Sure. Happy to.

25 After college, I went to law school. After that time,

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Beaupain - Cross

I clerked for a year in New York/New Jersey then actually was in Manhattan. I was an assistant District Attorney for New York County for three years. After that I actually went into the FBI, so I was a special agent for four years. And then after that I went into Google. At Google I started out with a team called the Global Investigations Team. It's a different team. We looked into confidential information being leaked, inappropriate access to our internal systems, things like that. After roughly four years there, I then transitioned over to the employee relations team, and I've been there ever since.

Q. At the time you were investigating Ms. Rowe's concern, approximately how many years of experience did you have investigating concerns raised by employees at Google?

A. It's 2018, and I started in '14, so in that four- to five-year range.

Q. And I just want to briefly pull up an exhibit that you were shown by Mr. Chiarello, and that's Plaintiff's 105. And I just have two quick questions about this document, if we can pull that up.

Ms. Beaupain, before today had you ever seen this document before?

A. I honestly don't know. I could have. Nothing coming to light is making me remember this document, though.

Q. Are you then aware of any of the circumstances that would support any of the findings that you see in this document?

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Beaupain - Cross

1 A. No.

2 MS. TOMEZSKO: Take that down, please.

3 Q. I also want to pull up another document that you saw, and
4 it's Plaintiff's 114.

5 Do you recall looking at this document earlier,
6 Ms. Beaupain?

7 A. I do, yes.

8 Q. I want to focus on the unfair treatment allegations box
9 that we see in the bottom right-hand corner there.

10 My question to you is if there were no — no
11 suggestions of gender discrimination in the leveling concern,
12 would you expect that the concern would be escalated to
13 employee relations?

14 A. No. No, we would only look into concerns where there was
15 concerns based on a protected class or based on our harassment,
16 discrimination, retaliation policy. So unfair treatment, on
17 its face you would expect to be handled with the HR/people
18 consultants.

19 MS. TOMEZSKO: We could take this document down.
20 Thank you.

21 Q. And I just want to make the record clear on this point. I
22 know we established what ER stands for, but can you explain
23 what employee relations is and what it does at Google.

24 A. Sure. The employee relations team, we actually have kind
25 of a number of different little smaller teams within it. The

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Beaupain - Cross

1 employee relations team, mainly the remit is to ensure that
2 Google is — if there's any concerns about policy violations,
3 like harassment, discrimination, retaliation, inappropriate
4 treatment, or misconduct based on a protected status, those are
5 kind of our main remits, ensuring that those types of policies
6 are followed, that practices are fair and consistent and
7 equitable. That's kind of the larger remit, if you will.

8 Q. Can you explain — well, is there a difference between
9 employee relations ER and human resources, HR, at Google?

10 A. Yes, absolutely. We both roll up to the same — it's
11 called the people operations. So it's like the large kind of
12 organization, but we roll up through separate directors,
13 separate vice presidents, if I'm — if I'm remembering
14 correctly, but we're separate teams. So we partner with them
15 in a lot of investigations in the sense of they might raise
16 concerns to us. If there's concerns about protected status or
17 policy concerns, they come to us for guidance, but we're very
18 too distinct teams.

19 Q. Is there any policy at Google that delineates which
20 concerns are typically investigated by employee relations and
21 which concerns are typically handled by human resources?

22 A. There's guidance out there, and I just — I couldn't point
23 to it right now, but there is definitely documentation for each
24 team on, you know, what their remit is and what employee
25 relations' remit is that would give a sense of when they should

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Beaupain - Cross

1 be taking matters and when we should be taking matters,
2 absolutely.

3 THE COURT: Could we just clarify for the jury what
4 you mean by "remit."

5 THE WITNESS: Oh, thank you. Yes. Remit is like what
6 are our roles and responsibilities, so what would be — what
7 would be expected of a role and responsibility for human
8 resources, what matters they look into, what matters they
9 address, kind of how they approach things, and in the employee
10 relations team, what our role and responsibilities are.

11 Does that clarify, your Honor?

12 THE COURT: Thank you.

13 Q. If we could just briefly pull up Plaintiff's 99, I think
14 you were shown this exhibit earlier as well.

15 A. Yes.

16 Q. Do you recognize this document?

17 A. Yes, uh-huh.

18 MS. TOMEZSKO: Could we turn to page 4 of the
19 document, please, under the heading "Who handles the concern,"
20 and let's make that a big bigger so we're not all straining our
21 eyes. Perfect.

22 Q. Ms. Beaupain, is this an example of such a policy that you
23 were referring to that defines the remit as you've explained
24 what that word means?

25 A. Yes, exactly. This delineates sort of the overarching

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Beaupain - Cross

1 responsibilities of each team and what they would be
2 addressing.

3 Q. So when it says, "Employee relations — Violations of our
4 policies against harassment, discrimination, and retaliation,"
5 is that an example of something that employee relations would
6 look into?

7 A. Yes, exactly.

8 Q. And then, conversely, on the bottom where it says,
9 "HR/Manager — Most other concerns, such as interpersonal
10 conflicts or challenges to performance ratings are typically
11 handled by the relevant manager or HR," is that an accurate
12 statement of your understanding of various remits that HR had
13 versus ER?

14 A. Yes.

15 MS. TOMEZSKO: We could take that document down,
16 please. I want to pull up yet another document.
17 Plaintiff's 44, if we can.

18 Q. Ms. Beaupain, do you recognize this document?

19 A. Yes.

20 Q. What is it?

21 A. Sure. This is an email that was between myself, Kevin
22 Lucas, who was an HR partner that I discussed earlier who
23 originally raised kind of the concerns for our team, and then I
24 also cc'd Janice Rumschlag, who was an analyst or was an
25 analyst at the time for the employee relations team.

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Beaupain - Cross

1 Q. Is that the same analyst you referenced earlier when you
2 were describing how you conducted your investigation?

3 A. Yes.

4 Q. And if we could focus on the August 29, 2018, email at
5 12:29 p.m. from Kevin Lucas.

6 And he says: "Below is the email from Ulku that we
7 discussed, and here is the rough data I pulled."

8 Can you explain what the context is for that
9 statement.

10 A. Sure. So when I spoke to Kevin Lucas, he was the one who
11 originally raised the concern about the — Ms. Rowe's concerns
12 about leveling with regards to gender. And so Kevin and I had
13 a conversation where he brought it up, and this is him then
14 sharing the additional information that we discussed live.

15 So the email, I'm assuming he's talking about the
16 email that Ulku had raised with her concerns. He forwarded
17 that to me so I'd have that context and then also the data that
18 was discussed. So Kevin pulled some data as far as to better
19 understand the concern with comparators, and then that's the
20 data I would have used when discussing with Janice, who was the
21 analyst, to make sure that the data was complete and what we
22 would expect to review during our investigation.

23 Q. And I just want to establish just general Google practice
24 here. We've seen a lot of documents that are underlined.
25 Specifically "here" has been underlined many times, and it

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Beaupain - Cross

1 appears to be a hyperlink.

2 Is that typically how people share documents at Google
3 via email?

4 A. It's a very common practice, yes.

5 Q. And is this a link to a document that exists elsewhere but
6 might be accessible to the email recipient?

7 A. Exactly, yes.

8 MS. TOMEZSKO: Now we could take this document down.
9 Thank you, Jean.

10 Q. After receiving that email from Mr. Lucas, did you begin an
11 investigation into Ms. Rowe's concerns?

12 A. Yes, I did.

13 Q. Now, when ER receives a concern regarding leveling, what
14 specifically are you reviewing when you investigate?

15 A. It depends case by case and what information we have and
16 what concerns are raised. So in this instance, there was a
17 concern raised about the level at hire, and also comparators
18 were provided by Ms. Rowe. So when we would look into it, we'd
19 want to not only look at the comparators that Ms. Rowe provided
20 but make sure we're comprehensive, so we'd look at other
21 comparators to get a sense of, you know, is there a concern
22 there, is the information reasonable on its face, and so we can
23 continue on our investigation.

24 Q. Are you reviewing specifically with compliance with any
25 specific leveling practice at the time? Is that part of your

NAIHRow5

Beaupain - Cross

1 review?

2 A. Can you repeat the question, please.

3 Q. Sure. Are you reviewing for compliance with a specific
4 leveling practice at the time? Is that what you're looking
5 into?

6 A. Not necessarily, no. We would want to understand. We're
7 relying on Google to have practices and policies in place, and
8 so we're not necessarily going back and going through those
9 practices again. That was conducted by Google, right? It's a
10 team that does that and multiple teams.

11 What we're looking at is was it reasonable and
12 objectively fair on the practice that was done, and then is
13 there anything else leading us to believe that it was unfair or
14 based on a protected status?

15 Q. And we're looking at your notes earlier from your
16 investigation — or, rather, the notes that were taken during
17 your investigation.

18 Can we pull those up at Plaintiff's 57, please.
19 Thanks. If we can flip to the back page.

20 Ms. Beaupain, the notes that begin where they say,
21 "Ulku Rowe — 10/1/18. ER April; Nerissa taking notes," do you
22 see that?

23 A. Yes.

24 Q. Do you see that reflects a meeting that you had with
25 Ms. Rowe as part of your investigation?

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Beaupain - Cross

1 A. Yes.

2 Q. And towards the top I just want to pull out — maybe it's
3 the fifth bullet point — "raised concerns with Melissa quickly
4 after arriving."

5 What does that reflect?

6 A. What I interpreted this to mean was that Ms. Rowe had
7 raised questions about her — her level at hire or her concerns
8 of her leveling at hire early on in the process, and that was
9 consistent with what — the information I had received from
10 Kevin Lucas as well.

11 Q. The reference to Melissa there, did you understand that to
12 be Melissa Lawrence?

13 A. That's what I understood it to be, yes.

14 Q. And was it your understanding that Ms. Lawrence had
15 previously looked into the concerns that you just referenced
16 there?

17 A. That was my understanding that — yes.

18 Q. And a little bit further down in these notes, there's a
19 reference to — yeah, right there, Jean — "Learned that all
20 her male comparators are coming in at an L9."

21 Do you see that?

22 A. Yes.

23 Q. Does this reflect notes taken about a statement made to you
24 by Ms. Rowe during the investigation?

25 A. Yes.

NAIHRow5

Beaupain - Cross

1 Q. What does L9 refer to there in this context?

2 A. Sure, a Level 9. So as I previously referenced, directors
3 at Google are considered like L8, or a Level 8, or L9, or a
4 Level 9. So I was understanding that to be that the
5 counterparts were coming in, from her perspective, all at a
6 Level 9.

7 Q. Now, at this point in the investigation, did you have
8 enough information or data to assess whether all male technical
9 directors in OCTO were, in fact, hired at Level 9?

10 A. No. Sorry, let me take a step back.

11 The investigation wasn't concluded at this point. I
12 want to make sure we're looking at relevant information. So I
13 had already seen the data that was showing the different
14 individuals that were hired, the levels that they had at hire,
15 but I wanted — still want to understand that in context of the
16 concerns Ms. Rowe raised and anyone else or anything else I
17 might need to look into at that time.

18 Q. And the data you had received which explained, I think you
19 said, the levels of the people, this was the data that
20 Mr. Lucas had pulled?

21 A. He had pulled. I just want to be thoughtful. I can't
22 recall — I know I worked with analysts, so I can't recall if
23 there was any additional information that was overlaid. So we
24 wouldn't just be relying on HR pulling the data.

25 Q. After you confirmed that the data was accurate from your

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Beaupain - Cross

1 analysts, were you able to reach a conclusion as to whether all
2 male technical directors in OCTO were in fact hired at Level 9?

3 A. Yes. And I found that not to be the case.

4 Q. I just want to focus at the very bottom of this particular
5 interview. Generally, at the end of an interview with a
6 complainant, is it your practice to ask any wrap-up questions?

7 A. Yes.

8 Q. What kinds of wrap-up questions would you ask?

9 A. Sure. I want to make sure I'm kind of capturing or
10 summarizing the concerns that they're raising and so I'm not
11 missing anything, because when we're in — when we're
12 discussing with complainants, they're sharing their concerns.
13 They're coming in, and sometimes if it's all over the place, we
14 might go in one direction or the another, and so I would always
15 ask kind of that follow-up question. So if it's a level —
16 leveling concern based on gender, something to the effect of,
17 you know, anything else you can share that leads you to believe
18 that this — that your concerns are based on gender? Something
19 to that effect.

20 Q. Did you ask something to that effect of Ms. Rowe in this
21 interview?

22 A. Yes.

23 Q. What was her response as reflected in these notes?

24 A. The notes reflect that she couldn't think of anything that
25 indicated it was based on gender, obviously other than she's

NAIHRow5

Beaupain - Cross

1 raising a concern, providing some counterparts, but nothing
2 that leads her to believe that that was based on gender.

3 Q. I believe earlier we spoke about or you and Mr. Chiarello
4 spoke about your interview with Jennie Burdis —

5 A. Yes.

6 Q. — as part of this investigation. Why did you interview
7 Jennie Burdis?

8 A. She was the recruiter who was hiring for the role, or at
9 least the most recent recruiter. There might have been someone
10 else involved kind of early on in the process. So when I had
11 this data, I wanted to better understand kind of what the data
12 meant, what practices or processes they would do to go through
13 the leveling and to work with leadership to understand and
14 assess levels.

15 Q. Did you find Ms. Burdis to be forthcoming in your interview
16 with her?

17 A. Yes.

18 Q. Did you find her to be cooperative?

19 A. Yes.

20 Q. I just want to look — we could stick on this page right
21 now. It's right above your interview with Ms. Rowe, the last
22 bullet point: "Key thing is that finance industry versus tech
23 industry."

24 Do you see that?

25 A. Yes.

NAIHRow5

Beaupain - Cross

1 Q. What does this note reflect about your conversation with
2 Ms. Burdis?

3 A. Sure. Ultimately, when looking at the levels of experience
4 for why individuals came in at L8 versus L9, the type of
5 experience also played a very significant factor, and that was
6 the — especially for Ms. Rowe who had a finance background,
7 that was the big factor was the type of experience as well.

8 Q. Now, if we could flip to the page immediately preceding
9 this, the last dark bullet point there, it says, "Tell Ulku
10 everyone hired was coming in at L8."

11 Do you see that?

12 A. Yes, uh-huh.

13 Q. Is that a question that you asked Ms. Burdis in the course
14 of your interview?

15 A. Yes.

16 Q. What did she say?

17 A. She said no. There's more information provided, but she
18 indicated that was not what she told Ms. Rowe.

19 Q. And the bullet point immediately below the one that we were
20 just looking at: "Def didn't tell Ulku everyone was coming in
21 at L8, but might have told her that we were hiring a group of
22 directors, but that spans two levels."

23 To your best recollection, is that an accurate
24 statement of Ms. Burdis' response to your question?

25 A. Yes.

NAIHRow5

Beaupain - Cross

1 Q. During this interview, did you find Ms. Burdis to be
2 credible?

3 A. Yes. I had no reason to disbelieve her during the course
4 of the interview.

5 Q. Now let's turn to the first page of these notes. And we
6 see here it says, "Ulku Rowe — 11/9/2018." Do you see that?

7 A. Yes.

8 Q. What does this reflect?

9 A. That would have been the closing — closing conversation,
10 the closeout with Ms. Rowe on that date.

11 Q. And during that closing conversation, did you share with
12 Ms. Rowe the findings of your investigation?

13 A. I did.

14 Q. There are several references here to talking points. Do
15 you see that?

16 A. Yes.

17 Q. The talking points that are referenced there, are those the
18 talking points that were put up on the screen just a few
19 minutes ago?

20 A. Yes, exactly.

21 MS. TOMEZSKO: Could we just pull those up quickly,
22 Jean. I think it's Plaintiff's 89.

23 Q. Now, Ms. Beaupain, did you, to the best of your
24 recollection, actually communicate to Ms. Rowe all of the
25 talking points that you see on this page here?

NAIHRow5

Beaupain - Cross

1 A. Yes.

2 Q. And in particular, the one that was pulled out earlier,
3 tech versus non-tech experience was the most heavily considered
4 factor when gauging L8 versus L9, do you see that?

5 A. Yes.

6 Q. Do you recall whether you communicated that specific point
7 to Ms. Rowe in the meeting?

8 A. Yes, I did, uh-huh.

9 Q. Now, when you concluded your investigation, did you have
10 any reasonable basis to believe that gender played a role in
11 Ms. Rowe's leveling at hire?

12 A. No.

13 Q. Did you have any basis to believe that her leveling was in
14 any way unfair?

15 A. No.

16 MS. TOMEZSKO: No further questions.

17 MR. CHIARELLO: No redirect, your Honor.

18 THE COURT: OK. Ms. Beaupain, you're excused. Thank
19 you.

20 (Witness excused)

21 MR. CHIARELLO: At this point, your Honor, we'd like
22 the Court to read the stipulation of undisputed fact to the
23 jury.

24 THE COURT: Members of the jury, this is a stipulation
25 of uncontested fact that the parties have handed to me. That

1 NAIHRow5

Tessier - Direct

1 means that it is a fact on which the parties have agreed.

2 As of September 19, 2019, Google Cloud's senior
3 leadership was aware of plaintiff's filed complaint and the
4 allegations contained therein.

5 MR. CHIARELLO: Thank you, your Honor.

6 Call Ashley Tessier.

7 THE COURT: OK.

8 THE DEPUTY CLERK: You could step forward.

9 ASHLEY ELIZABETH TESSIER,

10 called as a witness by the Plaintiff,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. CHIARELLO:

14 Q. Good afternoon, Ms. Tessier.

15 A. Good afternoon.

16 Q. I'm going to endeavor to be brief. We'll see how that
17 goes.

18 You are currently an employee relations director at
19 Google, is that right?

20 A. Yes, I am.

21 Q. And did you hold that role in late 2019 and 2020?

22 A. I held the role. My title changed to director in late
23 2021. I was an employee relations manager at the time that you
24 just stated.

25 Q. As an employee relations manager in the 2019/2020 time

NAIHRow5

Tessier - Direct

1 frame, you conducted interviews in connection with this lawsuit
2 that Ms. Rowe filed, correct?

3 A. I did.

4 Q. And you did so in connection with Google's policy regarding
5 investigating complaints of discrimination, correct?

6 A. More specifically, we have a policy against harassment,
7 discrimination, retaliation, and standards of conduct. So I
8 was looking into it with respect to that policy.

9 Q. And you interviewed witnesses or employees — individuals
10 in connection with that complaint, correct?

11 A. I did.

12 Q. Notes were prepared in connection with that complaint or
13 the interviews that were conducted?

14 A. Notes were taken from the interviews conducted, yes.

15 Q. And those notes were provided to Google's legal counsel, is
16 that correct?

17 A. Yes.

18 Q. It was important that those notes be accurate, correct?

19 A. Yes.

20 Q. And you would agree that both you and the other interviewer
21 took the responsibility to create accurate notes seriously?

22 A. Of course. Let me just clarify. The notes are not a
23 verbatim transcript. So they serve a purpose in the course of
24 the investigation, and we absolutely took that responsibility
25 seriously.

NAIHRow5

Tessier - Direct

1 Q. With that caveat.

2 Mr. Yang, could you please put up Plaintiff's 108.

3 I just have a few questions about this document.

4 Ms. Tessier, you recognize this to be the notes of the
5 interviews taken in connection with your investigation into
6 Ms. Rowe's lawsuit?

7 A. Yes.

8 Q. These are interviews that took place between October of
9 2019 and April of 2020, is that correct?

10 A. That sounds right, yes.

11 Q. And you conducted the interviews and somebody named Jordan
12 took notes, is that correct?

13 A. That's right.

14 Q. And what's Jordan's last name?

15 A. Terry, T-e-r-r-y.

16 Q. And he did so pursuant to Google's policy to take notes
17 during these interviews, correct?

18 A. That's right. There's no formal policy to that, but it's
19 our practice.

20 Q. Now, this investigation — these investigation notes
21 reflect interviews with Ulku Rowe, Kevin Lucas, Melissa
22 Lawrence, Stuart Vardaman, Tariq Shaukat, and Will Grannis, is
23 that correct?

24 A. That sounds right based on my recollection. I'm just
25 looking at the first page, but I trust you that the notes

NAIHRow5

Tessier - Direct

1 reflect all those interviews.

2 Q. OK. I'm sure Mr. Gage will correct me if I'm wrong on
3 that.

4 Is it fair to say that — Ms. Tomezsko, pardon me.

5 Is it fair to say that everyone that was interviewed
6 in connection with the investigation is reflected in
7 Plaintiff's 108?

8 A. If it's the complete set of notes, then yes.

9 Q. So it's correct that you did not interview any of
10 Ms. Rowe's fellow technical directors about work they'd
11 performed?

12 A. That's correct.

13 Q. And you did not interview any of Ms. Rowe's technical
14 directors about her discrimination claims?

15 A. That's correct.

16 Q. Did you ever share the outcome of this investigation with
17 Ms. Rowe?

18 A. I did not. She asked not to be further contacted by our
19 department, so I respected that.

20 Q. That's the reason you didn't share the outcome with her?

21 A. That's right, and at the advice of counsel, which I won't
22 speak to.

23 MS. TOMEZSKO: Objection. Can I just ask the witness
24 not to reveal the contents of any discussion with counsel.

25 MR. CHIARELLO: No further questions.

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Tessier - Cross

CROSS-EXAMINATION

BY MS. TOMEZSKO:

Q. Good afternoon, Ms. Tessier. How are you?

A. Good afternoon. Good. Thanks.

Q. Can you explain briefly for the jury your background at Google and your experience conducting investigations at the company.

A. Certainly. So I've been at Google for — it will be eight years in January. During my tenure, I've been with the employee relations group that entire time. I'm a lawyer by training, and I bring that experience to my role as an investigator and now director at Google.

I also participate in various workplace investigation trainings, and the like. We have a very robust set of trainings that our team takes to ensure that we're up-to-date with the most recent and best practices in terms of investigations work.

Q. Now, a moment ago you had testified that Ms. Rowe asked not to be contacted further by your department. Do you recall that testimony?

A. Yes.

Q. Can you explain a little bit more about that and what that is about.

A. Certainly. So our practice when we — when my team becomes aware of employee concerns is to reach out to the person

NAIHRow5

Tessier - Cross

1 raising the concern, in this case Ms. Rowe. I took that step,
2 as the notes I was just shown reflect, and — was that a knock?

3 Q. I'm not sure.

4 A. And I reached out to Ms. Rowe to ask her to speak with me
5 and my colleague Jordan so we could better understand her
6 concerns. We did meet. We had an hour meeting scheduled.
7 After about 25 minutes or so, Ms. Rowe said that she would like
8 to stop the meeting and didn't — didn't wish to share anything
9 further. She said that all information about her concerns
10 would be available through her complaint that she filed with
11 this court.

12 So we respect that decision. It's — it's up to the
13 person raising concerns if they wish to speak with us further.
14 My only caveat to Ms. Rowe is that we might be limited in our
15 ability to review her concerns if she didn't wish to cooperate
16 further, but I respected that she didn't wish to pursue any
17 further communications with me or my team.

18 Q. A moment ago you testified that you had spoken with Stuart
19 Vardaman as part of this investigation, is that right?

20 A. That's right.

21 Q. What was your understanding of Mr. Vardaman's role in the
22 underlying events that you were investigating?

23 A. Certainly. So Ms. Rowe had raised the claim about whether
24 the fact that she didn't — she wasn't selected for a head of
25 financial services role was on the basis of discrimination or

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Tessier - Cross

1 retaliation. So the context in which I spoke with Mr. Vardaman
2 was he was the recruiter for that role, not the hiring manager,
3 not a decision-maker. But I spoke to him to get context on the
4 interview process for that role in which Ms. Rowe took part.

5 Q. Earlier in this trial, Mr. Vardaman testified that he does
6 not recall using the word "cantankerous" to describe Ms. Rowe.
7 Do you have a recollection of him using the word "cantankerous"
8 in any of your discussions with him?

9 A. I — I don't. I don't have a specific recollection.

10 Q. If the word "cantankerous" appears in the notes, do you
11 have an explanation for why that might be?

12 A. It may be — so my colleague Jordan was taking notes during
13 all of the interviews, including Stuart's. It may be that
14 Jordan wrote down that word to summarize —

15 MR. CHIARELLO: Objection, your Honor. Speculation.

16 THE COURT: Sustained.

17 Q. Do you recall Mr. Vardaman describing Ms. Rowe as abrasive?

18 A. Not specifically. It's been four years now.

19 Q. Do you recall Mr. Vardaman conveying any information that
20 may have been captured as abrasive in the interview notes?

21 A. From what I recall of Stuart's statement, he was very
22 forthcoming about his experience with Ms. Rowe during that
23 interview process, and the impression he gave was that —
24 almost that she may have talked down to him as part of the
25 process or felt that the role should be hers based on

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Tessier - Cross

1 communications from prior years surrounding her hire, but I
2 don't remember the specific words you're asking me.

3 Q. Did anything that Mr. Vardaman said in the process of his
4 interviews with you give you a basis to believe that he was
5 exhibiting signs of gender bias or gender discrimination?

6 A. No, there was nothing to that effect.

7 Q. Was there anything that gave you a reason to believe that
8 he might have been acting with a motive to retaliate against
9 Ms. Rowe?

10 A. No, nothing to that effect.

11 Q. Now, after the investigation concluded, did you have a
12 discussion outside of the investigative process with
13 Mr. Shaukat, Tariq Shaukat?

14 A. I did.

15 Q. Can you describe for the jury what the substance of that
16 communication was and what you talked about with Mr. Shaukat.

17 A. Certainly. So I met with Mr. Shaukat as Ms. Rowe's then —
18 previous manager and the hiring manager for the role of head of
19 financial services. After I concluded my investigation, I
20 concluded that there were no policy violations that took place
21 either by Mr. Shaukat or anyone else. So I conveyed that to
22 him, and I also provided him some feedback in hindsight about
23 how he might have more effectively and directly communicated
24 with Ms. Rowe that she wasn't the most-qualified candidate for
25 that head of financial services role.

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Tessier - Cross

1 Q. To the best of your recollection, how did Mr. Shaukat
2 receive that information that you gave him?

3 A. He was very open to the feedback. He acknowledged that
4 hindsight's always 20/20, and he appreciated the feedback and
5 would take it into account going forward.

6 Q. I want to show you a document that was looked at earlier in
7 this trial.

8 I just want to pull up Plaintiff's 114, if we can,
9 Jean.

10 Ms. Tessier, do you recognize this document?

11 A. I do.

12 Q. What is it?

13 A. This is — it's a how-to guide to how to enter allegations
14 that my team investigates into an internal database called Case
15 360 where we manage our investigation records.

16 Q. Now, in your experience as an ER professional, what might
17 you use this document for, if anything, in connection with your
18 investigation?

19 A. Certainly. So it's a reference guide at the point at which
20 I'm entering into our Case 360 tool that I've conducted an
21 investigation regarding certain allegations. I might look to
22 this guide just for consistency in how to code that. Think of
23 it as a coding guide. I don't recall using it for Ms. Rowe's
24 investigation.

25 Q. Now, do you consider this to be a formal statement of ER

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Tessier - Cross

1 policy?

2 A. No, absolutely not.

3 Q. And would you happen to know approximately when this
4 document was created?

5 A. I — likely sometime end of 2018, early 2019 probably.

6 MS. TOMEZSKO: We could take this down, Jean, and I
7 just want to show you what's been marked as Plaintiff's 105.

8 Q. Ms. Tessier, I'm happy to scroll through this document to
9 see if you recognize this, but my question is going to be do
10 you recognize this document?

11 A. I believe so, yes.

12 Q. What is it?

13 A. It looks like some form of notes from a different
14 investigation unrelated to Ms. Rowe's investigation.

15 Q. Was it an investigation that you were involved in in any
16 way?

17 A. I was not. My team was. I see reference to Jordan's name.
18 That's the same Jordan who investigated Ms. Rowe's matter with
19 me. But I'm generally familiar with the matter, yes.

20 Q. So you have an understanding of the concerns raised and the
21 outcome reached in this particular investigation?

22 A. I do.

23 Q. Can you explain to the jury what the concerns raised in
24 this investigation were and what the outcome was to the best of
25 your recollection.

NAIHRow5

Tessier - Cross

1 A. Yes. This was a concern raised by a female employee that
2 she was underleveled at hire as a result of her gender. My
3 understanding is that the investigators found that there was no
4 gender bias or any improper action taken on the basis of
5 gender. However, they did find through the course of their
6 review that, given the nature of her work and her — the work
7 of her team, that she should have been changed to the next
8 level because she was doing work at that time of her concern
9 different from at the time of her hire.

10 Q. You said her level should be changed. Was her level the
11 only level that was changed as a result of this investigation?

12 A. I don't believe so. I believe we adjusted others, but I'm
13 not sure.

14 Q. If there was an adjustment to other's levels, would it be
15 reflected in this document?

16 A. I would think so.

17 Q. Would this — going back to the Plaintiff's 114 that we
18 looked at, in this situation that you just described, would
19 this be one of an example of where you would use an unfair
20 leveling characterization when categorizing or coding the
21 complaint in Case 360?

22 A. That sounds right to me. That was what was substantiated
23 in this case.

24 Q. Not done yet, Ms. Tessier, just one more question.

25 If we could pull that document back up, Jean, P105. I

1 NAIHRow5

Tessier - Cross

1 just want to highlight the second to last bullet point in the
2 first communication — or, sorry, the first entry that we see
3 here.

4 This is redacted. "Mentions that there may have been
5 up to ten people impacted across KAEs and other client groups."

6 Does that statement refresh your recollection that
7 there were possibly up to ten other people who were impacted by
8 the concerns raised in this particular investigation?

9 A. It does. Thank you.

10 Q. And would you happen to know whether all of those ten
11 individuals, if they were members of one particular gender or
12 were they members of both genders?

13 A. Both genders.

14 MS. TOMEZSKO: No further questions.

15 MR. CHIARELLO: No redirect.

16 THE COURT: Ms. Tessier, you're excused.

17 (Witness excused)

18 MS. GREENE: Your Honor, we're now calling
19 Ms. Ostrofe, who is our remote witness.

20 THE COURT: OK. Members of the jury, we have a
21 witness who is going to testify by video.

22 THE DEPUTY CLERK: Are you ready, plaintiff's counsel?

23 MS. GREENE: It looks like the second camera is
24 trained on the tables instead of the questioner.

25 THE DEPUTY CLERK: Instead of the —

NAIHRow5

Ostrofe - Direct

1 MS. GREENE: I'm sorry.

2 MR. GAGE: It's pointing at you, all of us.

3 MS. GREENE: Yes, I'm ready.

4 THE DEPUTY CLERK: OK. Ms. Ostrofe, that's how you
5 pronounce your last name, ma'am?

6 THE WITNESS: Ostrofe will do.

7 THE DEPUTY CLERK: Can you please raise your right
8 hand.

9 NORA OSTROFE,

10 called as a witness by the Plaintiff,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. GREENE:

14 Q. Good afternoon, Ms. Ostrofe.

15 A. It's still morning for me, but good afternoon to you.

16 Q. Very good. You are here today as an expert to offer an
17 opinion on Ms. Rowe's economic damages, is that right?

18 A. That is correct.

19 Q. And you have been retained by plaintiff's counsel, correct?

20 A. Yes.

21 Q. And you're being compensated for your time as an expert at
22 your typical hourly rate?

23 A. That's correct.

24 Q. What have you been asked by plaintiff's counsel to offer an
25 opinion on?

NAIHRow5

Ostrofe - Direct

1 A. I've been asked to calculate the economic damages to the
2 plaintiff, Ulku Rowe, as a result of alleged gender
3 discrimination, unequal pay, and retaliation.

4 Q. And what makes you qualified to offer such an opinion?

5 A. Well, I've been working as a forensics economist — that's
6 an expert witness who testifies — who calculates and testifies
7 to economic damages in court — for 24 years. I have a
8 bachelor's degree in economics from the University of
9 California, Los Angeles, and I have a master's degree in
10 business administration from St. Mary's College. I'm a board
11 member and a member of a number of professional associations
12 associated with valuing damages and economics.

13 Q. How many times have you served as an economic expert?

14 A. I would say hundreds of times over the course of my 24-year
15 career in this field.

16 Q. What documents did you review in this case to inform your
17 opinions?

18 A. I reviewed what was called a compensation adjustment
19 letter, which is something that Google puts out every year and
20 tells an employee what they will be receiving in base salary,
21 bonus, and equity refresher grants. I review pleadings,
22 depositions, declarations, and other — Morgan Stanley's
23 statements which would reflect vesting schedules of equity
24 grants and other miscellaneous documents related to the case.

25 Q. In total, do you recall how many documents you reviewed to

NAIHRow5

Ostrofe - Direct

1 inform your testimony?

2 A. Yes. I have numbered 81 on the document list in my report.

3 Q. Did you put together a report outlining your findings in
4 this case?

5 A. I put together three reports. My initial report was issued
6 on November 18, 2022. Then I did a supplemental report which I
7 issued on January 27, 2023. That included a new analysis, so
8 that I had two scenarios of damages. And then I issued a third
9 supplemental report on June 19, 2023, and that was to update
10 the damages to the then-trial date of August 14, 2023.

11 Q. OK. You mentioned that one of the things you were asked to
12 do was to calculate Ms. Rowe's losses that related to her equal
13 pay claims, is that right?

14 A. That's correct.

15 Q. Can you tell us how you calculated the damages on her
16 unequal pay claim.

17 A. Yes. For this claim I compared Ms. Rowe's compensation to
18 that of Nicholas Harteau, who was a Level 9 also employee with
19 the office of the chief technology officer of Google Cloud in
20 New York. And what I did was I looked at what Mr. Harteau had
21 received in salary, bonus, and equity refresher grants and what
22 Ms. Rowe had received and determined the difference between
23 what he was paid and what she was paid. And the measure of
24 that difference is her damages.

25 Q. Was there a broader question you were also considering with

NAIHRow5

Ostrofe - Direct

1 respect to her damages as it related to where they came in at
2 the beginning?

3 A. Yes. It was if Ms. Harteau had been leveled and
4 compensated equivalently to Mr. Harteau, what would she have
5 received?

6 Q. I think you may have said Ms. Harteau. Did you mean
7 Ms. Rowe?

8 A. I'm sorry, Ms. Rowe, yes.

9 Q. Mr. Harteau left in 2020. How did you account for him
10 leaving in your calculation of damages?

11 A. Well, we know what he would have been paid to the end of
12 the year because we had his Google compensation adjustment
13 letter that referred to 2020, and then I held his earnings
14 constant. So for 2021, 2022, and 2023, I used the — his
15 elements of pay from the 2020 year for those periods.

16 Q. Would you consider that to be a conservative approach?

17 A. Well, typically, people would receive salary adjustments
18 upwards from year to year. That would in turn affect their
19 bonus, which would generally be higher because it will be based
20 on the salary, and equity grants could vary from year to year.
21 But, yes, I think it is a conservative approach holding it
22 flat, because it's most likely that it would — at least the
23 salary would have gone up annually.

24 Q. Did Ms. Rowe's compensation stay flat between 2020 and
25 2023?

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Ostrofe - Direct

1 A. No. It increased so that the measure of damages each
2 succeeding year between what Ms. Rowe received and Mr. Harteau
3 received, the difference between their two compensations
4 narrowed a bit as time went on.

5 Q. And that's because you took into account Ms. Rowe's
6 increases but didn't apply any sort of similar increases to —

7 MR. GAGE: Objection to the leading, your Honor.

8 Q. — for Mr. Rowe — or Mr. Harteau, correct?

9 THE COURT: Sustained.

10 Q. OK. Let me ask a different question.

11 Did you consider Ms. Rowe and Mr. Harteau's
12 compensation — or did you treat it equally with respect to
13 applying increases in compensation?

14 A. Well, I held Mr. Harteau's compensation flat at the 2020
15 level for the — and that would be for the 2021, 2022, and 2023
16 years. For those years for Ms. Rowe, I — I deducted what she
17 had actually received, and she did receive increases over those
18 years.

19 Q. In calculating the compensation differential for Ms. Rowe
20 and Mr. Harteau, did you include their initial bonus and
21 signing equity awards?

22 A. No, I did not.

23 Q. Why not?

24 A. The reason was because Google did very often, in order to
25 induce someone who was employed elsewhere, for instance,

NAIHRow5

Ostrofe - Direct

1 Ms. Rowe was at JPMorgan Chase, those people might have
2 received equity grants. And if you're an employee and you
3 receive equity grants, they vest. So typically you get an
4 award of a certain number of shares of stock in the form of
5 restricted stock and options, and then they vest generally over
6 a three- or four-year period. So if you leave employment, you
7 cease to vest, and you forfeit that equity. You essentially
8 have to give it up.

9 So for people who have equity grants, for them to
10 leave a company and leave behind the equity they would have
11 vested in means that they leave money on the table. And for
12 that reason, Google would acknowledge that and grant people
13 additional equity so that they would be made whole for what
14 they left behind at their former employer.

15 Now, this would all be just up front at hire. It
16 wouldn't affect the — their pay based on their level and job
17 going forward.

18 Q. Did you make any adjustments to Mr. Harteau's bonus
19 compensation for his first year of employment?

20 A. Yes. I annualized it because Mr. Harteau was hired on
21 April 11, 2017, but he actually didn't come to work at Google
22 until mid-August. So he really only worked four and a half to
23 five months. So — and for that reason, Google prorated his
24 bonus. So I adjusted it to reflect what Ms. Rowe would have
25 received since she was working constantly at Google from March

NAIHRow5

Ostrofe - Direct

1 of 2017 until the end of the year.

2 Q. And Google did not prorate Ms. Rowe's bonus for that year,
3 correct? You didn't see anything suggesting that in your
4 documents?

5 A. That I'm not sure.

6 Q. What did you calculate Ms. Rowe's damages on the unequal
7 pay claim as related to Mr. Harteau to be?

8 A. Oh, that — that amount is \$1,968,853. For the court
9 reporter, it's 1,968,853.

10 Q. And does that include interest?

11 A. No, it does not include, in New York, prejudgment interest
12 of 9 percent per year compounded annually, simple interest.

13 Q. OK. And you also calculated Ms. Rowe's damages related to
14 discrimination and retaliation, correct?

15 A. Correct.

16 Q. And did you calculate damages relating to her not being
17 selected for the financial services vertical lead position?

18 A. Yes, I did.

19 Q. And that was the position that Stuart Breslow ultimately
20 filled, correct?

21 A. Correct.

22 Q. Can you tell us how you calculated the damages for the
23 financial services vertical lead discrimination and retaliation
24 claim?

25 A. Yes. Stuart Breslow assumed that position in — on

NAIHRow5

Ostrofe - Direct

1 December 10, 2018. So I calculated damages between what
2 Mr. Breslow earned in that position from December 10, 2018, up
3 until the date of trial, which — or the former date of trial,
4 which was August 14, 2023.

5 Q. And did you make any adjustments for Mr. Breslow's
6 compensation after he departed Google?

7 A. I did the same thing with him that I did with Mr. Harteau.
8 He also left Google in 2020, although we know what he would
9 have earned had he completed the 2020 year there. So for —
10 again, for the years of 2021, 2022, and 2023, I just used
11 Mr. Breslow's compensation from the 2020 year, kept it flat,
12 and carried it forward.

13 Q. And what components of compensation were you including when
14 you calculated damages for Ms. Rowe related to Mr. Harteau or
15 related to Mr. Breslow?

16 A. That would be base salary, annual bonus, and equity
17 refresher grants that were granted annually.

18 Q. What did you calculate Ms. Rowe's damages on the financial
19 services vertical lead position to be?

20 A. That would be \$687,507. Yes, 678,507.

21 Q. You were also asked to calculate Ms. Rowe's losses relating
22 to Google's retaliatory failure to consider her for the VP
23 financial services sales role, correct?

24 A. Correct.

25 Q. And that was the position that Yolande Piazza ultimately

NAIHRow5

Ostrofe - Direct

1 filled, correct?

2 A. Correct.

3 Q. Can you tell us how you calculated the damages for that
4 claim.

5 A. OK. Ms. Piazza's in the position on June 22, 2020. So I
6 calculated the difference between what she received in salary,
7 annual bonus, and equity grants, and I think because she was in
8 sales, she received a small spot bonus as well, and what
9 Ms. Rowe received in annual salary, bonus, and equity refresher
10 grants.

11 Q. So what did you calculate Ms. Rowe's damages on the VP
12 financial services sales role to be?

13 A. That will be \$5,735,276. For the court reporter that would
14 be 5,735,276.

15 Q. And that's without interest?

16 A. Correct.

17 Q. Have you calculated the value of Ms. Rowe's claims if she
18 prevails on both the equal pay claims related to Mr. Harteau
19 and the failure to promote claim related to Ms. Piazza?

20 A. Yes.

21 Q. And what is that number?

22 A. That would be \$6,742,503. So that's 6,742,503.

23 Q. And, again, that's without interest?

24 A. Correct.

25 Q. Now, why is that number smaller than the combination of

NAIHRow5

Ostrofe - Cross

1 what you told us were the damages for the Harteau equal pay
2 claim and the financial services VP claim?

3 A. Well, I gave you the total for the comparison with
4 Mr. Harteau from March of 2017 through August 14, 2023. If we
5 assume that she was going to be promoted to the VP of sales
6 financial services in June 22, 2020, we would only give her
7 Mr. Harteau's compensation to June 22, 2020, and then give her
8 Ms. Piazza's compensation from June 22, 2020, up until
9 August 14, 2023.

10 MS. GREENE: OK. No further questions, your Honor.

11 THE COURT: OK. Thank you.

12 MR. GAGE: Just five minutes to make some adjustments,
13 Judge.

14 THE COURT: You may. Also, please keep in mind that
15 I'm going to be looking to give the jury a break around 2:40,
16 2:45.

17 MR. GAGE: Got it.

18 CROSS-EXAMINATION

19 BY MR. GAGE:

20 Q. Hello, Ms. Ostrofe.

21 A. Good morning. How are you, Mr. Gage?

22 Q. I'm well. How are you? Good to see you.

23 A. I'm pretty good. We had an earthquake this morning, but I
24 didn't feel it.

25 Q. Ms. Ostrofe, you have not been retained to offer any

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Ostrofe - Cross

1 opinions on the reasons for any pay differences amongst —
2 between Ms. Rowe and her alleged comparators, correct?

3 A. That is correct.

4 Q. And you've not been asked to offer, nor have you offered,
5 any opinions as to whether there has been any pay
6 discrimination or violation of pay laws here, correct?

7 A. That's correct.

8 Q. Ms. Ostrofe, you yourself did not make any determinations
9 as to who is a proper comparator for Ms. Rowe, correct?

10 A. Correct.

11 Q. You are not offering any opinions regarding whether
12 Ms. Rowe and Mr. Harteau are similarly situated, correct?

13 A. Correct.

14 Q. In the course of your work that you — actually, I want to
15 take a quick step back.

16 Ms. Greene asked you some questions about how Google
17 sets starting pay packages. Do you remember your testimony on
18 that?

19 A. Just now, yes.

20 Q. Yes, just now, that's what I'm referring to.

21 You've never worked at Google, right?

22 A. No.

23 Q. So you actually have no basis for speaking to what Google's
24 intent is in setting starting pay packages, correct?

25 A. Well, I did review the declaration of Chris Humez.

NAIHRow5

Ostrofe - Cross

1 MR. GAGE: Your Honor, I asked her a yes-or-no
2 question.

3 THE COURT: Why don't you just answer yes or no.

4 A. Could you repeat the question? Do I know what Google's
5 intent is starting —

6 Q. Ms. Ostrofe, let me ask you a different question.

7 You've never worked in the compensation department of
8 Google, correct?

9 A. No.

10 Q. In fact, it's your understanding that a gentleman named
11 Chris Humez does work in compensation at Google, correct?

12 A. I'm not sure of his exact title. I know that my impression
13 is that he worked in human resources. Whether or not he works
14 in the compensation department, I'm not sure.

15 Q. Certainly someone who works in human resources at Google
16 would be in a better position to speak about why Google makes
17 decisions about starting pay packages than you, right?

18 A. Well, I'm only going by — my understanding came from the
19 declaration of Chris Humez.

20 MR. GAGE: Your Honor, I'd ask her not to speak about
21 a hearsay document and the content of a hearsay document.

22 THE COURT: I'm not familiar with the document. I
23 would just say that —

24 MR. GAGE: I'll move on. I'll move on, your Honor.
25 I'll move on to another topic.

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152 Ostrofe - Cross

153 THE COURT: Let's try to ask the questions that elicit
154 the testimony you're looking for.

155 And, Ms. Ostrofe, if you would try to respond
156 consistent with the question that's posed to you. Thank you.

157 THE WITNESS: Understood.

158 BY MR. GAGE:

159 Q. Ms. Ostrofe, you said that it's your understanding that
160 Stuart Breslow assumed the role of financial services vertical
161 lead, correct?

162 A. Correct.

163 Q. And your understanding comes from what plaintiff's counsel
164 has told you, correct?

165 A. Well, I've read a number of documents and pleadings and
166 depositions, so it's not exclusively from that because there
167 were documents that I was given from discovery that touched on
168 these issues.

169 (Continued on next page)

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NAIVROW6

Ostrofe - Cross

1 BY MR. GAGE:

2 Q. And you've read Ms. Rowe's complaint; correct?

3 A. Correct.

4 Q. You also -- I think you testified to the jury today that
5 you reviewed data from Google regarding compensation of
6 Ms. Rowe and other technical directors; correct?

7 A. Correct.

8 Q. And across the group of five L9 technical directors,
9 compensation between 2017 and 2023 went up and down year over
10 year for some of them; correct?

11 A. Well, base salary never went down; base salary would either
12 increase or, in a few instances, it remained flat. Bonuses
13 could vary and equity grants could vary.

14 Q. So Ms. Ostrofe, across the group of five L9 technical
15 directors, total compensation between 2017 and 2023 went up and
16 down year over year for some of them; correct?

17 A. It could vary, yes.

18 Q. And you also saw that Ms. Rowe's compensation went up every
19 year, her total compensation; correct?

20 A. I'd have to look at it year to year. My impression is that
21 although I think there might have been one year where things --
22 some things remained flat. Maybe not all of the elements.

23 Q. In preparing your opinions in this matter, you created for
24 yourself tables that reflect annual total compensation paid by
25 Google to Ms. Rowe and these other technical directors;

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Ostrofe - Cross

1 correct?

2 A. Correct.

3 Q. And according to your report, in 2018, the total
4 compensation for Ms. Rowe and each of her L9 comparators placed
5 Ms. Rowe as the third highest of six of them; correct?

6 MS. GREENE: Objection.

7 THE COURT: Give me a word or two.

8 MS. GREENE: Scope and hearsay.

9 THE COURT: Let's talk.

10 (Continued on next page)

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Ostrofe - Cross

1 (At sidebar)

2 THE COURT: Go ahead.

3 MS. GREENE: Yes. Her report has not been offered
4 into evidence here. I did not ask her questions about her
5 report. It's not the proper scope of cross-examination. It's
6 our witness, not theirs.

7 THE COURT: Go ahead, Mr. Gage.

8 MR. GAGE: She's offered testimony about pay
9 differentials, pay differentials over a period of time. And I
10 think I should be entitled to explore what the annual component
11 parts of that are. Because those annual component parts show
12 that in some years Ms. Rowe made more than comparators. So she
13 gives a total number for all, but doesn't in her own
14 calculations show that some years Ms. Rowe made more than
15 others. That undermines their case.

16 THE COURT: Ms. Greene.

17 MS. GREENE: They did not -- again, the report is not
18 in. They can ask about the underlying documents, they can show
19 her underlying documents that are in evidence. They chose not
20 to have their own expert. They did not offer their own expert
21 for purposes of rebuttal or offering their own opinion. And so
22 having made that decision, they can't now try to go back into a
23 document that's not in evidence and that was not the subject of
24 examination and dig into it.

25 THE COURT: The objection is sustained.

NAIVROW6

Ostrofe - Cross

1 (In open court)

2 BY MR. GAGE:

3 Q. Ms. Ostrofe, you've given some testimony about an overall
4 differential in pay that you believe existed between
5 Mr. Harteau and Ms. Rowe; correct?

6 A. Correct.

7 Q. Isn't it true that in your own calculations from the data
8 you were provided, you concluded that in some years Ms. Rowe
9 earned more than Mr. Harteau?

10 A. Strictly speaking, she earned more in the 2018 year, but
11 that is again because of --

12 Q. Yes-or-no question.

13 A. Yes.

14 Q. And Mr. Harteau also left OCTO before he left Google and
15 moved into another department at Google; correct?

16 A. That is correct.

17 Q. And yet you continued to use his Google compensation earned
18 outside of OCTO as a basis for your estimate of alleged
19 economic harm; correct?

20 A. That's correct.

21 Q. Even though he was working in a job that was very different
22 than the job that Ms. Rowe was performing; correct?

23 A. I don't know the degree of difference between the job he
24 was performing and the job that Ms. Rowe was performing after
25 he left OCTO.

NAIVROW6

Ostrofe - Cross

1 Q. We can rely on Mr. Harteau for that; correct?

2 A. I suppose.

3 Q. You have done absolutely no work whatsoever to evaluate how
4 Ms. Rowe was compensated relative to Level 8 technical
5 directors; correct?

6 A. That's correct.

7 Q. And you did not consider compensation paid to L8 technical
8 directors in OCTO other than Ms. Rowe to be relevant to your
9 calculations; correct?

10 A. No. Because the allegation of unequal pay is that when she
11 was hired and she should have been hired as a Level 9. So the
12 Level 8 comparators are therefore -- the Level 8 -- the Level 8
13 employees are, therefore, irrelevant to her claim.

14 Q. Right. But you don't know anything about what the Level 8
15 technical directors were doing; correct?

16 A. In some situations I did.

17 Q. Assuming that Ms. Rowe's performance -- withdrawn.

18 MR. GAGE: Your Honor, could we take our break early
19 so I can shorten up the rest of my examination?

20 THE COURT: We can, yes.

21 All right. Members of the jury, it is now 2:40. We
22 will return at 2:55 p.m. Please do not speak with each other
23 or anyone else about the case during the break. Please do not
24 do any research. And we'll see you in 15 minutes. Thank you.

25 (Jury not present)

NAIVROW6

Ostrofe - Cross

1 (Recess)

2 THE COURT: Ms. Williams, if you could please get the
3 jury right away.

4 THE DEPUTY CLERK: Okay.

5 (Jury present)

6 MR. GAGE: May I proceed, your Honor?

7 THE COURT: You may.

8 BY MR. GAGE:

9 Q. Just a few more questions for you, Ms. Ostrofe.

10 As far as you know, Ms. Rowe was evaluated as a Level
11 8 employee; correct?

12 A. I think we went over this in my deposition. She was --

13 Q. It's a yes-or-no question. It's just a yes-or-no question,
14 Ms. Ostrofe.

15 A. As I said in my deposition, I don't know -- I know she was
16 a Level 8 employee when she was evaluated. I don't know what
17 was in the mind of her evaluator when she was evaluating.

18 Q. Correct. And you also do not know whether level impacts
19 Google's expectations of employees, right?

20 A. That's correct.

21 Q. And in fact, you are assuming in your estimate that her
22 performance would have been evaluated similarly as a Level 9,
23 as it actually was as a Level 8; correct?

24 A. Well, in the scenarios, which I don't think --

25 Q. Can you answer the question, Ms. Ostrofe?

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Ostrofe - Cross

1 A. I did two sets of analyses. So in one set --

2 Q. It's a yes-or-no question, Ms. Ostrofe. You've only
3 testified as to one.

4 A. Okay. Why don't you --

5 Q. I'll state the question again.

6 A. Yes. Restate the question, please.

7 Q. Ms. Ostrofe, you are assuming that Ms. Rowe's performance
8 would have been evaluated similarly as a Level 9 as it actually
9 was as a Level 8; correct?

10 A. In the -- in the -- in the numbers that I presented, no.

11 Because I have -- I had just used what her comparators actually
12 were paid versus what she was paid.

13 Q. And what consideration are you talking about?

14 A. Nicholas Harteau, Stuart Breslow, and Yolande Piazza.

15 Q. And Nicholas Harteau was a Level 9, right?

16 A. He was.

17 Q. So you are assuming that Ms. Rowe's performance would have
18 been evaluated similarly as Mr. Harteau's was, as a Level 9, as
19 Ms. Rowe's performance actually was reviewed as a Level 8;
20 correct?

21 A. I'm assuming that she would have had performance similar to
22 what Mr. Harteau did as a Level 9, yes. Does that answer your
23 question?

24 Q. You are assuming that her performance would have been
25 evaluated the same as a Level 9 as it actually was as a Level

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Ostrofe - Cross

1 8, right?

2 A. I don't know that I am making that assumption, and
3 perhaps --

4 MR. GAGE: Your Honor, I'd like to play a clip from
5 her deposition, if I could, for impeachment purposes.

6 This is clip 66, please.

7 THE COURT: Go ahead.

8 MS. GREENE: What's the page number?

9 MR. GAGE: I'm sorry. It's deposition page 146, line
10 13, through line 20.

11 A. Is this the June 27th deposition or the November 18th
12 deposition?

13 Q. Page 146. Pages are continuous.

14 A. Oh, okay.

15 MR. GAGE: Can we play the clip please, your Honor?

16 THE COURT: Yes, you may.

17 MR. GAGE: Apologies for the technical difficulties,
18 your Honor. Challenge with the remote testimony.

19 MS. GUTIERREZ: One more time.

20 THE WITNESS: I think, Mr. Gage, we're talking
21 about --

22 THE COURT: There's no question pending right now.

23 Just hold on a moment please.

24 All right. Are you ready, Ms. Gutierrez?

25 MS. GUTIERREZ: Yes.

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Ostrofe - Redirect

1 (Video played)

2 MR. GAGE: No further questions, your Honor.

3 THE COURT: Thank you.

4 MS. GREENE: I just have two questions of redirect.

5 THE COURT: All right.

6 REDIRECT EXAMINATION

7 BY MS. GREENE:

8 Q. Ms. Ostrofe, you were asked questions about your
9 consideration of Mr. Harteau's compensation after he left OCTO
10 and moved into another role at Google. Do you recall that?

11 A. Yes.

12 Q. Did Mr. Harteau's level change when he moved into the other
13 position?

14 A. My understanding is that it did not.

15 Q. And from what you reviewed, did his salary -- was it
16 changed outside of the ordinary compensation consideration
17 periods?

18 MR. GAGE: Objection, your Honor. No foundation for
19 her to speak to what's ordinary.

20 MS. GREENE: Okay. I'll ask a different question.

21 THE COURT: Sustained.

22 Q. Did Mr. Harteau's salary change when he moved out of OCTO
23 and into his other role?

24 A. He was not given a different salary when he moved into his
25 other role.

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Ostrofe - Recross

1 Q. Did his target bonus change when he moved into the other
2 role?

3 A. No. He remained at a Level 9, and that would dictate --
4 his bonus percentage would be 40 percent of the previous year's
5 salary, that was his target bonus.

6 Q. So his compensation structure was the same in both the OCTO
7 role and the other role, is that your testimony?

8 A. That's correct.

9 MS. GREENE: No further questions.

10 MR. GAGE: Just a couple, your Honor.

11 RECROSS EXAMINATION

12 BY MR. GAGE:

13 Q. Ms. Ostrofe, Mr. Harteau's target bonus was just that,
14 right, it was a target; correct?

15 A. Correct.

16 Q. And so you did your calculations based upon money actually
17 paid to Mr. Harteau, right?

18 A. That's correct.

19 Q. And the money actually paid to Mr. Harteau was a function
20 of the job he did and his performance; correct?

21 A. Correct.

22 Q. And therefore, after he moved out of OCTO, his earnings
23 were earnings for a job different than the job Ms. Rowe was
24 performing; correct?

25 A. Well, again, I don't know the degree of difference between

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1 Mr. Rowe's and Mr. Harteau's job.

2 Q. I didn't ask you the degree of difference. It was a
3 different job as far as you understand; correct?

4 A. It was not an OCTO, yes.

5 MR. GAGE: No further questions, Judge.

6 MS. GREENE: Nothing further.

7 THE COURT: Okay. Ms. Ostrofe, you are excused.

8 Thank you.

9 THE WITNESS: Thank you.

10 (Witness excused)

11 MS. GREENE: Your Honor, our next witness is appearing
12 by video deposition, and that is Jennifer Burdis. So I believe
13 we're done with the Microsoft Teams.

14 THE COURT: Okay. Very good.

15 MR. GAGE: Your Honor, might we just have a brief
16 sidebar on an issue before the next witness? It's a practical
17 question I have for you.

18 THE COURT: Yes.

19 (Continued on next page)

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NAIVROW6

1 (At sidebar)

2 MR. GAGE: Just a practical timing question, your
3 Honor. I believe this video runs about 30-some minutes.

4 THE COURT: Okay.

5 MR. GAGE: I was going to ask -- or I will ask, I was
6 going to ask your Honor if we could have 15 minutes to organize
7 our thoughts for our motion before we present our motion. And
8 if I'm looking at the clock correctly, that will get us close
9 to 4 o'clock.

10 THE COURT: To 4 o'clock, right.

11 MR. GAGE: And this morning we talked about the risk
12 of plaintiff's case spilling into Thursday. We know that's not
13 going to happen now.

14 THE COURT: Right. This is your last witness?

15 MS. GREENE: This is our last witness.

16 MR. GAGE: It's their last witness. So will we end
17 the day with our motion, and we'll just put our witness on in
18 the morning.

19 THE COURT: Who's your witness?

20 MR. GAGE: Mr. Humez, a comp analyst.

21 THE COURT: How long is he?

22 MR. GAGE: He'll definitely carry over. I think
23 between direct and cross, I expect he'll probably be an hour.
24 And our whole case, I expect, will be over by -- if we start --
25 were we going to start at 9 tomorrow?

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1 THE COURT: I was going to raise some of this with you
2 during the break, but I wasn't sure the witness was -- I
3 thought she could hear us, so --

4 MR. GAGE: I just want to raise it practically now.

5 THE COURT: Which is fine.

6 I mean, I don't mind keeping the jury to 4:45. I want
7 to make sure that the case goes to them as soon as possible.

8 So let's say if we do a half hour now, let's call it
9 3:40, okay, for this video. Then you want 15 minutes, so five
10 of four. Then you're going to --

11 MR. GAGE: Make our motion.

12 THE COURT: Right. But at that point I'm going to
13 hear the top-line arguments.

14 MR. GAGE: Yes.

15 THE COURT: That would be less, like a few minutes.
16 And then I think we should get started on your next witness and
17 do that till quarter of five.

18 MR. GAGE: Okay. I just want to know, because when we
19 talked about it this morning, he's not here, that's why I
20 raised it now.

21 THE COURT: Where is he?

22 MR. GAGE: He's close by.

23 THE COURT: Okay. I understand. That's fine.

24 MR. GAGE: We'll have him, then we'll have him come
25 over. That's really all I wanted to sort out.

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1 THE COURT: Okay. That sounds like a good plan.

2 (In open court)

3 THE COURT: Are we ready?

4 MS. GREENE: Yes. I'm sorry, we're ready.

5 THE COURT: Okay.

6 MS. GREENE: Ms. Gutierrez.

7 (Videotaped Deposition of Jennifer Burdis played)

8 MS. GREENE: Your Honor, I would just ask that you
9 note, as you did with Mr. Eryurek and Mr. Wilson's deposition
10 testimony, that these reflect the deposition designations of
11 both defendant and plaintiff.

12 THE COURT: Yes. Members of the jury, please take
13 note of that. Thank you.

14 All right.

15 MS. GREENE: Your Honor, plaintiff rests her case at
16 this time.

17 THE COURT: Okay. Thank you, Ms. Greene.

18 All right. Members of the jury, we are going to do
19 something now that we haven't done in any previous day, and
20 that is we're going to take another break. Because plaintiff
21 has rested her case, and the lawyers need a few minutes to sort
22 of organize and plan their next steps. So I anticipate that
23 you'll be out of the room about 20 to 25 minutes.

24 Does that sound right, counsel?

25 MR. GAGE: 25.

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1 THE COURT: Okay. All right.

2 So, well, let's say we'll be back here at about 4:10
3 to 4:15. Ms. Williams will come get you then.

4 And please do not talk to each other or anyone else
5 about the case. And please don't do any research about the
6 case while you're on break. Thank you.

7 (Jury not present)

8 THE COURT: Okay. You can be seated.

9 We're going to take a break too, right?

10 MR. GAGE: Yes. That's what I thought, your Honor.

11 THE COURT: Okay. That sounds right. All right.

12 MS. GREENE: Your Honor, what time do you want us
13 back?

14 THE COURT: Can we do 15 minutes? Okay. So call it
15 4:05, with the goal of getting the jury back in here at 4:15,
16 and your witness will be ready.

17 MR. GAGE: Yes, he should be here. He may already be
18 here.

19 THE COURT: Okay. Very good.

20 (Recess)

21 THE COURT: So, Mr. Gage, this is Google's elevator
22 pitch of the Rule 50 motion, right? And then after we release
23 the jury, we'll hear more -- or we'll hear more from Ms. Greene
24 or Mr. Chiarello.

25 MR. GAGE: I assumed the elevator pitch. I didn't

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1 realize you were going to, sort of, allow us to continue.

2 THE COURT: If you like. If you like. I'm just
3 mindful of the jury.

4 MR. GAGE: To be sure.

5 THE COURT: Okay.

6 MR. GAGE: To be sure.

7 And I appreciate your Honor letting me make a record
8 after they've rested and before we proceed.

9 THE COURT: Yes, of course.

10 MR. GAGE: May I, your Honor, start the elevator
11 pitch?

12 THE COURT: Yes.

13 MR. GAGE: Your Honor, the first claim I'd like to
14 talk about is Ms. Rowe's retaliation claim. The law is clear
15 she needs to prove that she had a subjectively and objectively
16 reasonable belief that there was illegal conduct going on. And
17 we respectfully submit that there is no evidence to suggest
18 that. Ms. Rowe herself, her entire belief that there was
19 something wrong with her leveling is because she thinks she's
20 as qualified as other people. And that's not enough. And she
21 told -- we heard it today, the evidence shows clearly, she told
22 the investigator, Google's investigator, that she did not have
23 any reason to believe that gender played a role in her
24 leveling. So first and foremost, we don't think that plaintiff
25 has established a *prima facie* case of protected activity.

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1 Second, on the retaliation claim, there is no evidence
2 in the record whatsoever that her alleged protected activity
3 was in any way a factor – in any way a factor – in any of the
4 things that she claims were retaliatory.

5 And let's list them:

6 One, her not getting the financial services vertical
7 lead role. The evidence consistently and undisputedly shows
8 that from the very beginning, Mr. Shaukat was not impressed --
9 as impressed by her as he was by other candidates. It never
10 changed. Despite the fact that she had multiple opportunities
11 to change his view, his opinion was consistent. His opinion
12 was the reason why she didn't get the job. And there's no
13 evidence to suggest that his learning that she had concerns
14 about her leveling had anything to do with that decision.

15 The retaliation claim relating to the vice president
16 for financial services sales job. Similarly, the evidence is
17 undisputed that Ms. Kliphouse made the decision not to consider
18 Ms. Rowe further after she had spent time with her over coffee.
19 And the evidence is undisputed that she already had a preferred
20 candidate, a senior executive at Citigroup, and she didn't want
21 to take -- and the evidence is undisputed, Mr. Vardaman said
22 it, she didn't want to take any further time considering other
23 candidates. So we believe there's no evidence of causation on
24 the retaliation claim.

25 THE COURT: Mr. Gage, let me stop you one second.

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1 From here, I don't want you to do an argument that's
2 this fulsome and then not hear from Ms. Greene or Mr. Chiarello
3 until after. So I think you should go to a higher level now.

4 MR. GAGE: Okay.

5 THE COURT: Let's do that.

6 We also have the jury waiting.

7 MR. GAGE: I'm sorry. I was trying to keep it at a
8 high level, Judge, not high enough apparently. I'll be quick.

9 On the discrimination claim, your Honor, same thing
10 about the leveling. We don't think there's any evidence
11 whatsoever that gender played any role whatsoever in the
12 leveling. There is no discrimination claim on the vice
13 president financial services sales job, that's only a
14 retaliation claim. And again, similarly, there's no evidence
15 that gender played a role in Mr. Shaukat's decision about the
16 financial services vertical lead role.

17 Your Honor, on the Labor Law 194 claim, first and
18 foremost, we believe the evidence clearly shows Ms. Rowe was
19 doing something differently than Mr. Breslow. Hers was an
20 engineering job, his wasn't. The evidence we've heard between
21 Ms. Rowe and Mr. Harteau clearly shows he was doing different
22 work than her, so she can't establish that *prima facie* case.

23 At the second level of the analysis, your Honor, we
24 believe that level is a *bona fide* factor, other than sex. And
25 if the plaintiff cannot prove – which we don't think she has –

NAIVROW6

1 that gender played a role in leveling, as a matter of law, your
2 Honor, and as a matter of law of the case, level is a *bona fide*
3 factor other than sex. And for that, your Honor, I refer to
4 Judge Schofield's decision denying the plaintiff's motion for
5 summary judgment. Judge Schofield said that if level is not
6 tainted by bias, gender bias, that would be a basis for finding
7 in Google's favor in this case.

8 Finally, your Honor, last part of my pitch, there is
9 absolutely no evidence to support the claim of willfulness or
10 reckless disregard for Ms. Rowe's rights. And since your Honor
11 wanted me to keep it high level, I will stop there.

12 THE COURT: Okay. Thank you.

13 So we will pick up with that that after the witness is
14 out of the box and the jury has been released for the day.

15 Why don't we bring in the witness now.

16 (Jury present)

17 CHRIS HUMEZ,

18 called as a witness by the Defendant,

19 having been duly sworn, testified as follows:

20 THE COURT: Mr. Gage, just for planning purposes, I
21 intend to release the jury at 4:45.

22 MR. GAGE: Got it.

23 THE COURT: Thank you.

24 MR. GAGE: I will plan accordingly, Judge.

25 DIRECT EXAMINATION

NAIVROW6

Humez - Direct

1 BY MR. GAGE:

2 Q. Good afternoon, Mr. Humez.

3 A. Good afternoon.

4 Q. What do you do for a living?

5 A. I'm a compensation manager at Google.

6 Q. And can you explain to the ladies and gentlemen of the jury
7 what a compensation manager does at Google?

8 A. We make sure that the company follows the company's
9 compensation philosophy as approved by the board, which is to
10 reward and retain talent at the company.

11 Q. Before we get into the meat of it, could you describe for
12 the jury your background before you came to Google, your
13 professional background?

14 A. Professional background? Yup.

15 Right after -- you know, after university, I did an HR
16 rotational program for the first two years. And then I went on
17 to do executive compensation at a financial services firm. And
18 then that was the job immediately preceding joining Google.

19 Yeah.

20 Q. And what financial services firm were you working at before
21 you joined Google?

22 A. Goldman Sachs.

23 Q. Are you familiar with how compensation is structured in the
24 financial services industry in New York?

25 A. Yes, I am.

NAIVROW6

Humez - Direct

1 Q. And what years were you working at Goldman Sachs?

2 A. Between 2014 and 2016.

3 Q. And can you describe your general understanding of how
4 compensation is structured in the financial services industry.

5 MS. GREENE: Objection. Relevance.

6 THE COURT: I'll allow it.

7 Q. You can go ahead, Mr. Humez.

8 A. Yeah. So compensation in general is structured in the
9 financial services industry with a base salary; so you get that
10 guaranteed element of compensation. And then total bonus. So
11 in financial services, it will be -- the total bonus will be
12 split between a portion paid in cash immediately, and then
13 typically the remaining part of the bonus will be granted in
14 equity that will vest over some time period, which will depend
15 on the firm, how long that will be.

16 Q. And in your experience working in the financial services
17 sector in New York, are bonuses guaranteed?

18 A. No, no. They are typically 100 percent discretionary.
19 They can be fairly volatile year over year, depending on the
20 performance of the firm.

21 Q. And in your experience in the financial services industry,
22 are there even target bonuses that are a function of or
23 percentage of base pay?

24 A. No, that's not common in the industry.

25 Q. When did you join Google?

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Humez - Direct

1 A. August 2016.

2 Q. August of 2016?

3 And can you describe first what the components of
4 compensation are at Google for director-level employees.

5 A. For director-level employees, it will consist of a base
6 salary. So there's typically three elements of pay. So it's
7 base salary, cash bonus. And for an L8 director at the
8 company, the target bonus is related to the level. So for a
9 Level 8, it's 30 percent target of base salary.

10 And then the other element to pay is what we call
11 equity refresh, so annual equity or stock awards.

12 Q. How, in your experience, are cash bonuses different at
13 Google than they are in the financial services industry?

14 A. I would say it's much more structured in that there is a
15 target bonus. Like I said, it's -- for directors L8 at Google,
16 it's a 30 percent target. At a financial services firm, it
17 could vary widely year to year based on the firm's performance.
18 So it's much more discretionary. And at Google, I would say
19 the actual bonus that you receive is much more formulaic or
20 algorithmic, in that it will vary based on your actual
21 performance rating. And so it's much more, like I said,
22 formulaic based on performance.

23 Q. Okay. I want to take a step back.

24 So compensation at Google for directors is base pay,
25 cash bonus, and equity; correct? Those are the three

NAIVROW6

Humez - Direct

1 components?

2 A. Yeah. Correct.

3 Q. What is a job code at Google?

4 A. It's the definition of somebody's role and responsibility.

5 So it's essentially the combination of the role that you're
6 performing and the level that you're in.

7 Q. And when Google is setting starting pay for someone that's
8 hired — and we'll come to Ms. Rowe in a minute, but I just want
9 to speak generally about how this is set — how does Google
10 determine base pay for a starting pay package?

11 A. So for base salary for every single role that we have at
12 the company, so based on the job code and the location, we do
13 essentially annual benchmarking. So we want to make sure based
14 on the external market that we're competitive for similar roles
15 in similar locations. So we set on the base salary what's
16 called a market reference point. So that's essentially the
17 target salary pay point for that role.

18 So for new-hire compensation, our goal is as much as
19 possible to bring people in at the kind of starting point for
20 that role so that, going forward, their increases can be more
21 determined based on their performance.

22 Q. And can we refer to market reference point as MRP? Is that
23 how it's referred to at Google?

24 A. Yeah.

25 Q. So MRP is specific to job code, and job code is specific to

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Humez - Direct

1 the job title and level; correct?

2 A. That's correct.

3 Q. Okay. And when you're putting together an offer, speaking
4 just about base pay, is there a particular percentage of MRP
5 that you're usually shooting for?

6 A. Yeah, that's the starting percent of MRP. Really the
7 minimum that we would ever offer somebody is 80 percent of MRP.

8 Q. Okay. And just for simple math, if MRP is \$100,000, does
9 that mean that you would start somewhere between 80 and 100 in
10 your calculation?

11 A. Yeah, that's correct.

12 Q. Okay. And is that first number that you come up with just
13 specific to the job code and the geography?

14 A. Yes. Yeah.

15 Q. So if a hiring manager wants to hire someone, all you need
16 to know is the job code and the geography to come up with that
17 number, is that fair to say?

18 A. Yeah, that's correct.

19 Q. So you don't know if the candidate is a man or a woman, is
20 that fair to say?

21 A. No, by design, we don't.

22 Q. Now, let's talk about bonus for a second. And I think
23 you've probably already answered this, but I want to make sure
24 it's clear. How is bonus determined or bonus -- if someone is
25 hired as a Level 8, what is their bonus eligibility, cash

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Humez - Direct

1 bonus?

2 A. It's -- the target is 30 percent of their base salary. And
3 then the actual bonus that they would receive would be
4 dependent on their performance ratings throughout the year.

5 Q. Okay. And what is the target for a Level 9 director?

6 A. Forty percent of base salary rather than 30 for an L8.

7 Q. And is an L9 director's bonus, ultimate bonus that she or
8 he receives, a function of their performance as well?

9 A. That's correct.

10 Q. Could you explain to us how an initial equity -- we're
11 still talking about coming up with a starting pay package for
12 someone. Does it sometimes include an equity award?

13 A. Yes.

14 Q. And how do you go about determining what a starting pay
15 package equity award might be?

16 A. It follows a very similar process as determining the MRP or
17 market reference point. So we go through this external market,
18 benchmarking, and we have a new-hire equity guideline that we
19 set for every single job code in every single location that
20 we're operating in.

21 Q. And is that likewise done without regard to the identity of
22 the candidate?

23 A. It's purely based on the roles and responsibilities.

24 Q. Earlier you used the term -- you said it was determined
25 algorithmically. Can you explain to the jury what you meant by

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Humez - Direct

1 the use of that word?

2 A. Yeah. So when we go through annual compensation planning,
3 we -- it follows basically an equation where, you know, take --
4 if we take bonus for an example, they have their target cash
5 opportunity. So for an L8, for example, 30 percent of their
6 base salary, that's their target bonus. And then based on
7 their performance ratings throughout the year, there's a
8 multiplier that we have that are tied to each rating. And then
9 based off of that, and there's some proration factors, so if
10 they only worked half the year, it would take that into account
11 as well. And then that simple equation renders the modeled
12 bonus that they would have received.

13 And then on top of that, there is the opportunity for
14 a manager to exercise some discretion or make adjustments to
15 the model amount.

16 Q. And so again, is the modeled amount without regard to
17 whether the person is a man or a woman?

18 A. Correct.

19 Q. It has nothing to do with how the amount is determined;
20 correct?

21 A. It's based on the performance rating.

22 Q. And the performance rating is determined by whom?

23 A. In part by the direct manager.

24 Q. Okay. Does Google evaluate pay on an annual basis once
25 someone started? Let me ask the question. So we'll get to

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Humez - Direct

1 Ms. Rowe in a minute. But once someone is hired at Google,
2 does Google on an annual basis re-evaluate their pay?

3 A. Yes.

4 (Continued on next page)

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Humez - Direct

1 BY MR. GAGE:

2 Q. Can you explain how Google reevaluates a Googler's pay, an
3 employee's pay, on an annual basis?

4 A. Yeah. So on an annual basis, we go through what's called
5 annual compensation planning, or we use what we call the gComp
6 tool, which is our comp planning tool. And they'll go through
7 this process, and essentially, you know, they'll have modeled
8 amounts based on their performance ratings throughout the year.
9 So their performance rating will be a direct input to how much
10 their salary increases each year, what their ultimate bonus is
11 that they receive, and ultimately, again, the equity award that
12 they may be granted.

13 Q. And is all of that done algorithmically?

14 A. Yeah.

15 Q. Were you involved in the — in formulating Ms. Rowe's
16 starting pay package when she was hired at Google?

17 A. Yes, I was.

18 Q. And what was — describe for the jury what your role was in
19 that process.

20 A. I was the one who actually crafted the offer for Ms. Rowe.
21 So the process itself was, you know, gathering, at the time,
22 her current compensation and putting together an offer that's
23 — that's compelling so that she would be enticed to join
24 Google.

25 Q. You said you gathered information. Who did you gather

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Humez - Direct

1 information from?

2 A. It was through the recruiter. So the recruiter had — we
3 have essentially like a standard intake form that gathers the
4 details of their current pay, and so I interacted with the
5 recruiter to gather that information.

6 Q. And did there ever come a point in time when you actually
7 spoke with Ms. Rowe?

8 A. Yes. Later on in the process, I did.

9 Q. And what prompted the conversation between you and
10 Ms. Rowe?

11 A. There were just several questions. You know, from the
12 recruiter's perspective, questions and concerns around, you
13 know, the differences of how financial services firms, and
14 specifically JPMorgan, approaches pay and, to be honest, the
15 drastic differences between how Google approaches pay and sort
16 of — especially because I've been in both the financial
17 services industry and going to Google was in the position to
18 answer some of those questions and, you know, help, yeah,
19 understand the differences there.

20 Q. And whose concerns were they?

21 A. Ms. Rowe's.

22 Q. So do I understand correctly that you got on a GVC, a
23 Google videoconference, with her to discuss her concerns?

24 A. I believe it was just a phone call.

25 Q. Just a phone call.

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Humez - Direct

1 OK. And can you describe that conversation.

2 A. Yeah, it was mostly, like I said, just answering questions
3 on, you know, Google's overall compensation philosophy, how
4 increases are determined each year, how it works in terms of
5 how bonuses are awarded, how equity awards might be awarded
6 going forward because, like I said, it is very different from
7 — from previous experience in financial services. So it was
8 mostly questions understanding the differing philosophies and
9 structure.

10 Q. Based upon your participation in that conversation and your
11 observations, did you feel that you allayed any concerns she
12 had?

13 A. I thought I did, yeah.

14 MR. GAGE: OK. I'd like to show the witness
15 Plaintiff's Exhibit 5, and we can — I believe we can show the
16 jury. This is a plaintiff's exhibit. I think it's already
17 admitted into evidence, your Honor.

18 THE COURT: OK.

19 MR. GAGE: If we could, Jean, just slowly flip through
20 this and give Mr. Humez an opportunity to look. This is a
21 lengthy exhibit.

22 Q. And while you're looking through it, Mr. Humez, my ultimate
23 question is do you recognize this document?

24 A. I do.

25 Q. Just tell us, what is this document, Plaintiff's Exhibit 5?

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Humez - Direct

1 A. Yeah. It's the email correspondence between myself and
2 Ms. Rowe's recruiter.

3 Q. Does this reflect the back and forth over the information
4 that you needed?

5 A. Yeah, that's exactly correct.

6 MR. GAGE: I'd like to turn to page 2 of this exhibit.
7 And, Jean, if you could just highlight both of those charts at
8 the top. Let's make those big enough so everybody can see
9 them.

10 Q. Now, first, Mr. Humez, at a high level, what are these two
11 charts supposed to depict?

12 A. It's supposed to depict — on the top, it's an estimate,
13 projection, of Ms. Rowe's current pay at JPMorgan at the time,
14 and then the bottom is a modeling against that, those numbers
15 of the offer, the Google offer. So our approach generally is
16 to look at things on an annual cash flow basis. So cash flow
17 meaning the sum of base, bonus, and equity that would be
18 received each year. And our goal really is, you know,
19 generally to be over four years, where possible, 10 to
20 15 percent above their current pay.

21 Q. So did I hear you correctly that you're trying to estimate
22 an amount that they would receive each year going into the
23 future that's more than they're currently making?

24 A. Yeah.

25 Q. So I'd like to break down this first chart at the top. You

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Humez - Direct

1 said the top table is your numbers — well, is that reflective
2 of the numbers that you arrived at based on the information you
3 received from Ms. Rowe?

4 A. Yes, that's correct.

5 Q. Let's focus just on year one. What does the 350 represent?

6 A. Ms. Rowe's base salary at the time.

7 Q. And the number right below that, 361, what does that
8 represent?

9 A. That represents the last actual cash bonus that she
10 received at JPMorgan.

11 Q. And so this document, we don't need to flip back. I can
12 tell you this email exchange is dated December of 2016. So the
13 361 was her bonus paid for what?

14 A. It was for — it was her bonus paid in January of 2016 for
15 performance in 2015.

16 MS. GREENE: Objection, your Honor, I just want to
17 note the date of the document is incorrect.

18 THE COURT: Mr. Gage will now go back to that page,
19 please, and let's take a look at the date on the top.

20 MR. GAGE: Did I misstate? December '16,
21 December 2016. Did I not say 2016? I'm sorry.

22 THE COURT: Which document are you looking at?

23 MR. GAGE: P5. P5, email sent December 2016. If I
24 misspoke, I apologize. I thought I —

25 MS. GREENE: My apologies. I couldn't tell from the

NAIHRow7

Humez - Direct

1 document which page of this document you were on and which of
2 the charts. I understand now you are correct. It's
3 December 16.

4 THE COURT: December 2016?

5 MS. GREENE: Correct.

6 BY MR. GAGE:

7 Q. So just to come back to what we were talking about, so the
8 361, is that 361,000?

9 A. Yeah, 361.

10 Q. So is it — was it your understanding that Ms. Rowe had
11 received, in or about January of 2016, \$361,000 from JPMorgan
12 Chase for her performance in 2015, is that what you said?

13 A. That was my understanding, yeah.

14 Q. Now, based on your understanding of how the financial
15 services industry works, was she guaranteed to receive a
16 \$361,000 bonus for her work in 2016?

17 A. No, it wouldn't be guaranteed. It would be, yeah,
18 discretionary. It could have been, yeah, higher or lower.

19 Q. Higher or lower.

20 OK. So why did you put 361 in there?

21 A. Because there is — there is no target bonus, so we did not
22 want to assume that she would receive no bonus.

23 Q. OK.

24 A. So we assumed the last actual.

25 Q. And then the number right below the 361, 711, is that just

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Humez - Direct

1 a total of top two numbers?

2 A. Yes, that's correct.

3 Q. So what's the 253 in year one in your chart on the top?

4 What does that represent?

5 A. That's 253,000 — so it's the value of equity that would be
6 vesting in that upcoming first year based on prior equity
7 awards. So equity awards that were granted in previous years,
8 that would have then started to vest in that — that first
9 year.

10 Q. So are you projecting that in, if she had stayed at
11 JPMorgan Chase, January of 2017, she would have actually vested
12 in \$253,000 of JPMorgan equity?

13 A. That's correct.

14 Q. That had been granted in prior years?

15 A. In prior years.

16 Q. So is the \$963,000 number your estimate of what you thought
17 her cash flow would be for 2017 at JPMorgan?

18 A. Correct. But it was an estimate because the bonus was —
19 was not known at that time.

20 Q. OK. So now let's go down to the chart at the bottom.

21 Staying in the column for year one, how did you arrive at
22 \$290,000 for the base salary?

23 A. So it was as — it was as high relative to MRP as we were
24 comfortable going. It was quite high. I believe, from
25 recollection, it was 98 percent of MRP, so — so, yeah, quite

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Humez - Direct

1 high in the range. And so we wanted to stretch as high as we
2 could to, you know, recognize the fact that it would be a
3 decrease from the current base salary.

4 Q. The 87,000, what's that? Where's that come from?

5 A. That would just be 30 percent of the 290,000.

6 Q. And then the next number, 250,000, what's that?

7 A. That's a one-time cash sign-on bonus that we'd be paying
8 immediately after starting.

9 Q. So then where it says 627, that's the total of the numbers
10 above it, right? So that's the total cash that the starting
11 offer you put together would put in Ms. Rowe's pocket in 2017,
12 is that right?

13 A. Correct.

14 Q. Then let's go to the next number down, 416. What is that?

15 A. 416 is the annual vesting value of a four-year grant that
16 we'd be giving. So it would be 2,200, what we call, Google
17 stock units, so stock units. So it's the annual vesting value
18 of the 1.662 million that you'll see all the way to the right
19 of that.

20 Q. So the 2,200 GSUs, that's a number of units and not
21 dollars, right?

22 A. Yeah, a number of units.

23 Q. Of stock units?

24 A. Right. And at the time, based on the stock price, were
25 value at, yeah, 1.662 million.

NAIHRow7

Humez - Direct

1 Q. And then the next number just below that, 550, what's that?

2 A. That is a second equity grant. So it's quite, I would say,
3 abnormal to give a second grant. Typically, the structure of
4 our offer is just a four-year grant. So this is just a second
5 grant that we were granting Ms. Rowe that would vest just over
6 the first year.

7 Q. So what was the total amount that the offer you put
8 together was estimated to put in Ms. Rowe's pocket in year one,
9 2017, if she joined Google?

10 A. It was estimated at the 1.593 million.

11 Q. As a function of your estimate of her JPMorgan pay, that
12 was what percent?

13 A. 65 percent higher.

14 Q. 65 percent higher.

15 In your experience as a comp professional at Google,
16 was that a generous offer?

17 A. It was, yeah.

18 Q. Is it more generous than most?

19 A. Yeah, more generous than most.

20 Q. And why — you put this together. Why was such a generous
21 offer put together for Ms. Rowe?

22 A. I mean, it reflected the — you know, how — how much we
23 wanted to bring her on board, and it was also reflective of the
24 differing — the differing comp structures between both Google
25 and JPMorgan.

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1 MR. GAGE: Now I'd like to just quickly go to year
2 two. We will not go through all years, Judge, but I do want to
3 quickly go through year two. And I'm mindful of my time.

4 Q. Year two in the top chart, Mr. Humez, you've got 979. Is
5 that an estimate of what, based on the information you had, you
6 thought she would earn from JPMorgan in 2018?

7 A. That is correct.

8 Q. You were assuming a constant bonus, constant equity,
9 roughly constant equity for her?

10 A. Yeah, the value of equity that would have been vesting in
11 that year.

12 Q. OK. But now we go to the bottom and Google cash flows year
13 two. We go all the way to the bottom, and the number's a lot
14 smaller. Why is that? It's a lot smaller than it was in year
15 one. Why is that?

16 A. Because in year one we had a one-time cash sign-on bonus
17 and the special equity grant that vested over just the first
18 year.

19 Q. Now I see in the row that says "New hire equity," there's
20 the number 416, and that's the same number that's to the left
21 and to the right and to the right. Is that part of the
22 2,200 GSUs that were granted her when she started?

23 A. Correct, yeah.

24 Q. What happened? Why would she get those in the second year?

25 A. Because the 2,200 GSUs just vest evenly, so 25 percent in

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1 each year over four years.

2 Q. Is that the same thing in year three and year four there?

3 A. Yeah.

4 Q. And as a director in Google, once Ms. Rowe joined, was she
5 eligible to receive additional equity awards in years one,
6 years two, years three, and year four in the future?

7 A. Yes.

8 Q. And does your Google cash flows chart here project anything
9 for those additional awards?

10 A. No, it does not.

11 Q. Does this projection you have for four years show an
12 estimate that she would earn more at Google than she earned at
13 JPMorgan?

14 A. Yes, it does.

15 MR. GAGE: Your Honor, I appreciate — just one last
16 question, then I'll pause.

17 Q. Mr. Humez, was anything in this offer intended to replace
18 something at JPMorgan?

19 A. No, it was not intended to specifically replace anything.
20 It was intended to have higher annual cash flows over the
21 four-year period.

22 MR. GAGE: Your Honor, I understand you want to take a
23 break now.

24 THE COURT: Yes.

25 All right. Members of the jury, we're going to stop

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1 now for today. Please remember while you're gone overnight,
2 don't talk to anybody about the case, don't talk to each other,
3 don't do any research.

4 And tomorrow, if you could please be here by 9 a.m.,
5 we'll start with testimony at 9:15.

6 (Jury excused)

7 (Continued on next page)

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1 (Jury not present)

2 THE COURT: You may step down now. We'll see you in
3 the morning.

4 THE WITNESS: Thank you.

5 THE COURT: All right.

6 (Witness temporarily excused)

7 THE COURT: You can be seated.

8 All right. Ms. Greene, Mr. Chiarello.

9 MS. GREENE: Yes, your Honor. This is my opportunity
10 to respond to —

11 THE COURT: This is.

12 MS. GREENE: OK, your Honor. Just generally, first
13 point to note is that as the moving party — or as the
14 nonmoving party in this case, all inferences in terms of the
15 evidence must be construed in our favor. There is plenty of
16 evidence by which a jury could determine that each of the
17 elements of our claim have been met.

18 Speaking, first, to retaliation — before I do that,
19 your Honor, I want to note that these are claims that are
20 brought under the New York State Equal Pay Law Section 194 and
21 the New York City Human Rights Law, and those are very, very
22 different statutes than the federal laws in terms of proof, in
23 terms of burdens, in terms of defenses. And so the
24 subjectively and objectively reasonable belief standard is not
25 the correct standard.

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1 Here, Mr. Shaukat understood that Ms. Rowe was raising
2 a complaint of bias. ER understood that she was raising a
3 complaint of bias. They investigated it. That's enough to
4 constitute protected activity under the law, and the jury
5 should be able to hear that evidence.

6 With respect to — and with respect to the document
7 that Mr. Gage has alluded to, that document itself points out
8 gender differences with respect to the men who were leveled as
9 and no women leveled as 9. And in testimony, Ms. Beaupain
10 was asked about the general question being, Is there anything
11 else? And Ms. Rowe answered that she was not aware of anything
12 suggestive of gender beyond what she'd already testified and
13 beyond what she'd already said to Ms. Beaupain in that review.

14 Again, in any event, they understood it to be a
15 complaint of discrimination, and the adverse action that they
16 then took is contrary to the law. Temporal proximity itself is
17 enough to establish causation. Here, we're talking about a
18 matter of days in between the protected activity and the
19 adverse action. Ms. Rowe's complaint on August 28; September 1
20 when Mr. Vardaman noted that she's no longer viable. We have
21 her complaint on November 7. We have just a few weeks later
22 where she was a candidate with respect to the financial
23 services vertical — I'm sorry, the VP financial services sales
24 role. It was six days between Mr. Vardaman's interview with ER
25 and where he was asked about Ms. Rowe's claims and her

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1 reach-out about this and then his subsequent denial to put her
2 into the — into consideration. We've not heard from
3 Ms. Kliphouse, as defendant said. We've not heard any
4 testimony from Ms. Kliphouse as to a nondiscriminatory reason
5 for those actions, and there's plenty from which a jury can
6 infer that Mr. Vardaman was motivated by bias in terms of how
7 he handled Ms. Rowe's consideration.

8 With respect to the equal pay claim, there is evidence
9 by which a jury could determine that Ms. Rowe was performing
10 equal work as that's defined under New York Labor Law
11 Section 194, both with respect to Mr. Breslow and Mr. Harteau.
12 Mr. Breslow testified as to the — the job that he was
13 performing, what it entailed, what it involved. It's very
14 similar to how Ms. Rowe described her job, and especially
15 during the time period when they were both working in financial
16 services. It's enough for a jury to consider whether that
17 standard is met under the New York Labor Law.

18 With respect to the affirmative defense, Mr. Gage is
19 just wrong. It's not enough to show a bona fide factor other
20 than sex to establish the defense. New York Labor Law requires
21 something more. It requires that it be job related and
22 consistent with business necessity. And in fact, the Second
23 Circuit just issued a decision yesterday on this very issue,
24 the case is *Eisenhower v. The Culinary Institute of America*,
25 No. 21-2919-CV. An issue there was whether the affirmative

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1 defense standard is the same under the Equal Pay Act and the
2 Equal Pay Law, and the Second Circuit overturned the summary
3 judgment decision in defendant's favor, remanded back to the
4 district court for the correct application of the affirmative
5 defense in that, unlike the EPA, the EPL requires that it be
6 job related and consistent with business necessity, and that's
7 because the law was amended in 2016 to make that distinction.

8 THE WITNESS: With respect to evidence willfulness or
9 reckless disregard of rights, again, there's evidence that's
10 been presented to the jury that Ms. Rowe repeatedly raised
11 concerns and that her concerns were dismissed and weren't
12 remedied. And that's — that is sufficient to meet the
13 standards by which liquidated damages are assessed under the
14 New York Labor Law and punitive damages, which are assessed on
15 the lower standard under the Court of Appeals decision *Chauca*,
16 which established the punitive damages standard for the New
17 York City Human Rights Law and noted that it's a lower
18 threshold than what exists under Title VII.

19 Under those lower thresholds for willfulness and
20 reckless disregard of rights, there's evidence by which a jury
21 could determine that we've met that criteria, and it should be
22 for the jury to decide at this point. So we would respectfully
23 request that the Court deny defendant's motion for a directed
24 verdict.

25 Oh, I'm sorry, your Honor, just one other thing. And

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1 it should be obvious, but there's ample evidence with respect
2 to gender bias and motivation. Ms. Rowe has testified as the
3 only woman in the technical director Level 8 and Level 9, and
4 the differential treatment itself is enough by which a jury
5 could determine that gender played a role.

6 A jury could also look at the reasons asserted by
7 defendant for the differentiation between the two, and if the
8 jury finds that's pretextual, that it's not really the reason,
9 the jury can draw an inference of unlawful motivation,
10 discriminatory motivation. And so those are just two of the
11 means by which a jury could find gender bias to exist.

12 The standard, again, under the New York City Human
13 Rights Law for issuing a summary judgment or directed verdict
14 in defendant's favor is much more in favor of the employee.
15 There has to be no way by which a jury could conclude that —
16 that gender played a role, and here — and the decisions —
17 and, your Honor, I could find it for you. I don't have it.
18 It's in — or another decision that's critical to this, but the
19 decisions make clear that it is a much lower standard, and it's
20 whether gender played any role in the plaintiff being treated
21 less well.

22 So there's two important distinctions, one is whether
23 it played any role — not a significant role, not the primary
24 role, any role. And the standard for adverse action is less
25 well, were they just treated in any way less well, and that's

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1 sufficient to state a claim for discrimination under the New
2 York City Human Rights Law.

3 So, again, for those reasons we respectfully request
4 that the Court deny defendant's motion.

5 THE COURT: OK. I am now going to need a couple of
6 minutes so, I don't think it's long enough that you'll want to
7 leave the courtroom, but I'll be back shortly. Thank you.

8 (Recess)

9 THE COURT: Please sit down.

10 The defense has moved, as is proper at this stage of
11 the case, under Rule 50 for a judgment on the grounds that
12 there is not sufficient evidence on which a jury could find in
13 Ms. Rowe's favor on her claims of equal pay, gender
14 discrimination, and retaliation, as well as on the question of
15 willfulness. I'm first going to address Ms. Rowe's claims and
16 then take up willfulness in regard to damages.

17 Furthermore, in resolving a Rule 50 motion, all
18 evidence is to be construed in the light most favorable to the
19 plaintiff as the nonmoving party, and all reasonable inferences
20 shall be drawn in favor of the plaintiff as the nonmoving
21 party. The ruling that I am about to make needs to be read in
22 that spirit. I am not resolving the case here. I am simply
23 resolving a Rule 50 motion.

24 I am denying the Rule 50 motion and letting the case
25 go to the jury. I have paid careful attention to the evidence

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1 in this case and have greatly benefited from the work of
2 counsel on both sides. I will start with this.

3 I have no doubt that a jury could find for the defense
4 in this case. There is certainly an evidentiary basis for
5 that. However, the issue here is not whether a jury could find
6 for the defense, it is whether the jury could find for
7 plaintiff. My view is that, on the record that has developed,
8 there is sufficient evidence on which a jury could return a
9 plaintiff's verdict. I'm going to start with the Section 194
10 claim.

11 There is evidence from which the jury could find that
12 Ms. Rowe and Mr. Harteau were doing equal work. For one thing,
13 evidence has been adduced establishing that Ms. Rowe and
14 Mr. Harteau were hired for the same role, that is, technical
15 director in OCTO. Not only that, but Mr. Harteau himself
16 testified that his and Ms. Rowe's work was "similar."
17 Specifically, they "were doing the same sort of work in the
18 same sort of circumstances." And I'm citing here to page 839,
19 lines 3 through 4, of the transcript.

20 I likewise find that a jury could find that Google
21 retaliated against Ms. Rowe. I'm going to start by addressing
22 Ms. Rowe's efforts to obtain the FSVL role.

23 Among other things, on August 28, 2018, Ms. Rowe made
24 a complaint to Melissa Lawrence expressing concern that men had
25 been leveled at Level 9, specifically noting that "I was told

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1 that everyone hired for the role was being hired at a Level 8.
2 I later learned that my male peers were hired at Level 9," and
3 this is reflected in PX 42. Then just days later, Mr. Vardaman
4 wrote in an internal report "sounds like she," meaning
5 Ms. Rowe, "is not viable for the role." I'm citing to, among
6 other things, PX 69 at page 97.

7 With respect to the VP sales position, a jury might
8 find noteworthy the temporal proximity between Ms. Rowe's
9 complaint and the alleged retaliatory action. Ms. Rowe filed
10 her complaint in this court in September 2019, and several
11 months later, in February 2020, Ms. Piazza was hired for the
12 sales role. Furthermore, the fact that it was Mr. Vardaman
13 acting as the internal recruiter for both this position and the
14 earlier FSVL role is a link that the jury might choose to
15 credit.

16 In regard to Ms. Rowe's gender discrimination claim, I
17 conclude that a jury could find that Ms. Rowe was similarly
18 situated to Mr. Harteau among other male L9 colleagues but was
19 treated less well, including because of her pay.

20 In sum, I conclude that there is sufficient evidence
21 to go to the jury on the claims just addressed. We will see
22 which way they ultimately come out.

23 As to the question of willfulness, in regards to
24 damages, I likewise find that there is sufficient evidence to
25 submit this question to the jury. The jury could find that

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1 Google knew that Ms. Rowe was performing equal work to her
2 alleged male comparators yet was being paid less.

3 Specifically, Ms. Rowe made an internal complaint that she was
4 paid less and she filed a lawsuit, such that a jury could find
5 that, despite Google's knowledge of both that internal
6 complaint and court complaint, they continued paying her less.
7 At the very least, a jury could find that Google was reckless
8 in that regard. So damages will go to the jury to decide.

9 I therefore deny the Rule 50 motion. In the event of
10 a plaintiff's verdict, defendant may submit a post-verdict
11 motion at that point. Everyone will then be able to proceed
12 with the benefit of time and reflection, the opportunity to
13 carefully examine the transcript and evidence, the ability to
14 advance applicable authorities and fleshed out arguments, and
15 so forth.

16 Now I think we should talk about tomorrow. So
17 tomorrow we will have — we will convene in here at 8:30 a.m.,
18 and we will have a charging conference. We are going to be
19 working overnight on the charges, and we will send them to you
20 from chambers email before the charging conference so that you
21 can review them.

22 What are you thinking about time at this point for
23 tomorrow in terms of the presentation of evidence?

24 MR. GAGE: Could I just raise one question in the
25 charging conference — or rather, make a point?

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1 THE COURT: Yes.

2 MR. GAGE: In light of the evidence, your Honor, we
3 would ask that the verdict form place the discrimination
4 claim first. And I'm not trying to argue the point, but I just
5 want to make the suggestion that we are asking for is that, on
6 the verdict form, the jury first answer the question on the
7 discrimination claim. And you will see our proposed verdict
8 form asks them to determine whether the plaintiff has proved by
9 a preponderance of the evidence that gender was a reason for
10 her level, because if they don't find that, if they don't find
11 that she proved that, it has implications for the New York
12 Labor Law claim inasmuch as it is, again, referring to Judge
13 Schofield's decision on summary judgment, a bona fide factor,
14 and we believe there's ample evidence of business necessity,
15 etc., etc. So —

16 THE COURT: OK. Ms. Greene.

17 MS. GREENE: Yes, your Honor. We would absolutely
18 oppose that because it's intended to conflate the two issues.
19 Equal Pay Law does not require any sort of gender motivation in
20 the decision, and by putting the gender claim first, it would
21 confuse the jury by suggesting that gender somehow is relevant
22 to the finding of an Equal Pay Law claim. The affirmative
23 defense is an affirmative defense and should be treated
24 separately from the jury's finding of the *prima facie* case on
25 liability.

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1 MR. GAGE: Your Honor, just if I can respond. If we
2 do it the way counsel is suggesting, I think there's a real
3 risk that your Honor's going to have to face — could face an
4 inconsistent verdict, and that's the reason I'm suggesting that
5 they answer the question about leveling on the discrimination
6 claim first. Because if the jury determines that Google did
7 not set her level based on her gender in violation of the
8 discrimination law, then, again, per Judge Schofield's ruling,
9 if it wasn't a tainted variable, level — we've already heard
10 some testimony from Mr. Humez that level is a determiner of
11 pay. We know it's a determiner on bonus — and so if the jury
12 determines that the plaintiff hasn't proved it was tainted,
13 then by definition we can rely on it on the fair pay claim, the
14 Section 194 claim on the affirmative defense. And I worry that
15 if we do it the other way around and they say, no, she didn't
16 prove discrimination, but they also say, no, there's no bona
17 fide factor, your Honor might be faced with some
18 inconsistencies that we have to resolve at the end of trial.

19 MS. GREENE: Your Honor, I would just note that
20 defendant bears the burden to prove that it's a
21 nondiscriminatory factor that is both business related — or,
22 I'm sorry, job related and dictated by business necessity. So
23 even if defendant is right that the jury were to find that
24 gender is not at play here, it doesn't mean that they've
25 automatically established their defense. They still bear the

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1 burden of showing that it was something other than gender and
2 it was job related and consistent with business necessity.

3 So, again, flipping those is intended to confuse the
4 jury and suggest that gender somehow in and of itself relates
5 to the underlying claim for the New York Equal Pay Law instead
6 of the affirmative defense, which is really where it belongs.

7 MR. GAGE: It's not intended to confuse anything.
8 They're clearly different sections on the verdict form, and
9 they've got labels for them. So it's not intended to confuse.

10 THE COURT: OK. I think I got it.

11 MR. GAGE: Your question, your Honor, about tomorrow?

12 THE COURT: Yes.

13 MR. GAGE: We have — counting Mr. Humez, who we've
14 already got started, we have a total of six witnesses. And we
15 did get a time check from Ms. Williams.

16 THE COURT: Oh, good.

17 MR. GAGE: And collectively, the parties have 4.6
18 hours. I'm not saying that because we intend to use them all,
19 Judge, but —

20 THE COURT: OK.

21 MR. GAGE: And so if we start at 9:00, it looks to me
22 if we — if your Honor takes the half-hour lunch and takes a
23 15-minute morning break, that we'll finish the evidence
24 sometime midafternoon is my best guess.

25 THE COURT: OK.

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1 MR. GAGE: Depending upon, you know, the breaks and
2 everything like that, but that's my best guess.

3 THE COURT: OK. Thank you.

4 So let me say something about summations. Summations
5 are either both going to be tomorrow or they're both going to
6 be Friday morning. I'm not having the defense, OK, summation
7 tomorrow and then an overnight and then a plaintiff summation
8 on Friday morning. So keep that in mind as we go through the
9 day.

10 I have thoughts about additional items that it would
11 be helpful for counsel to prepare. I think you should prepare
12 a list of exhibits for the jury — and you can confer with each
13 other on format and whatnot — and a list of witnesses. And
14 you might as well get started on making sets of exhibits, three
15 of each, in case they ask, so we'll have them ready to go into
16 the jury.

17 In terms of testimony, if they ask for testimony, I
18 assume somebody is going to have the capability of doing
19 redactions here on a laptop in the courtroom, is that correct?

20 MR. GAGE: Redactions, your Honor?

21 THE COURT: Yes. Well, they could ask for testimony
22 on a particular topic, and you and the plaintiff will have to
23 figure out if you can agree on what's responsive to that. If
24 you can't, I'll be a referee. And the sidebars will have to be
25 redacted and objectionable questions that were sustained, the

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1 objectionable question — questions and the — my ruling would
2 be redacted because that's not evidence, and it would be
3 confusing for that to go to the jury.

4 MR. GAGE: So in my past experience, your Honor, if —
5 we would go through a process. Jury has a question, what about
6 Bob say about X? Counsel will confer. We'll come up with we
7 think it's on these pages. And in my experience, we would have
8 the jury come back in, and the court reporter would read those
9 pages, and we would just not read if there was a sidebar or
10 anything like that. That's what I thought.

11 THE COURT: How does the plaintiff feel about that?
12 The problem is it could be — depending on what they ask, it
13 could be quite lengthy.

14 MR. GAGE: No, no, I recognize that, but there's no
15 way of predicting.

16 THE COURT: OK. Ms. Greene.

17 MS. GREENE: Your Honor, I would agree that for short
18 testimony that's probably the easiest way to handle it.
19 Certainly, there are other ways. And we have copies of the
20 transcripts, and, you know, there's — if nothing else, there's
21 the old-school method of cutting and paste using a Sharpie
22 where needed. So we will be prepared with those tools
23 available to us for lengthier testimonies where we may need to
24 cut out portions or redact portions. I think that will
25 probably be easier than trying to do it electronically and then

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1 printing off something for the jury.

2 THE COURT: OK. That's fine with me.

3 What else?

4 MS. GREENE: Your Honor, you had asked us this morning
5 about our request that Google supplement its production —

6 THE COURT: Yes.

7 MS. GREENE: — related to those documents and which
8 of our document requests it's responsive to.

9 THE COURT: Yes.

10 MS. GREENE: It's responsive to three of our requests,
11 and the first is 36: All documents supporting defendant's
12 affirmative defense that defendant's employment decisions,
13 including all hiring, compensation, and promotion decisions,
14 were based on legitimate and nondiscriminatory factors
15 unrelated to plaintiff's protected characteristics. So those
16 documents go to Ms. Piazza's selection over Ms. Rowe and their
17 affirmative defense on that front.

18 The next is document request No. 39: All documents
19 supporting defendant's affirmative defense that, assuming
20 defendant committed the acts or omissions alleged in the
21 amended complaint for discriminatory or retaliatory motives,
22 such acts or omissions would have been taken in any event for
23 legitimate nondiscriminatory, nonretaliatory reasons. I think
24 it's squarely within that one.

25 And then finally, 47, which is the general all

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1 documents concerning plaintiff's claims or defendant's defenses
2 of which defendant is aware that have not been provided in
3 response to the requests above. Now, defendant is aware of
4 these documents because it produced a subset of them. They've
5 done nothing to establish that there's any undue burden or
6 harassment in supplementing their production at this time. So
7 we would ask those documents be supplemented in time for
8 Ms. Kliphouse's testimony tomorrow.

9 THE COURT: When is Ms. Kliphouse tomorrow?

10 MR. GAGE: I'm sorry, what was the question?

11 THE COURT: When is Ms. Kliphouse going on?

12 MR. GAGE: Tomorrow.

13 MS. TOMEZSKO: We anticipate she's one of — second to
14 last witness.

15 THE COURT: OK.

16 MR. GAGE: Sometime afternoon.

17 May I respond, your Honor —

18 THE COURT: Sure.

19 MR. GAGE: — to the absurd suggestion that we've
20 produced a subset?

21 Your Honor, as far as I know, we've produced the
22 documents that exist. Judge Gorenstein — first of all, these
23 discovery requests that counsel is talking about are discovery
24 requests that were propounded under a different pleading that
25 did not even include this claim. When Judge Gorenstein allowed

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1 them to amend, Judge Gorenstein specifically told them they
2 couldn't take any discovery.

3 We have produced documents. We've satisfied our
4 Rule 26 obligation. And, your Honor, as far as I know, we've
5 produced all of those documents, these — what are we calling
6 them status — status reports, and I have no reason to believe
7 that there are others. But, again, like I said this morning, I
8 got this request at 2 o'clock yesterday afternoon, and if
9 counsel hasn't noticed, I'm in the middle of a trial, and so I
10 haven't had time to go do discovery. But I have no reason to
11 believe there are others, and this is an outrageous request at
12 the last second that has no basis.

13 THE COURT: OK. I got it.

14 Go ahead.

15 MS. GREENE: I would just note, your Honor, that we
16 are here because they brought these documents in with
17 Mr. Vardaman, and Mr. Vardaman testified that these were
18 records he was creating on a regular basis. So there's at
19 least a basis for Google to go back and check whether there are
20 other documents like this that are responsive and relate to
21 this affirmative defense they've asserted that they would have
22 hired Ms. Piazza anyway and that they did not consider her
23 because Ms. Piazza was already the person they decided on.

24 So, you know, I — at a minimum, they should be
25 required to check whether such documents exists, and it

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1 shouldn't be burdensome to do so because they know where the
2 other documents were saved. Mr. Vardaman was the custodian.
3 This should not be a heavy lift.

4 THE COURT: One second, Mr. Gage.

5 Is this, the one shown to Mr. Vardaman, is this the
6 only one of this document that has been produced?

7 MR. GAGE: We provided them a number of them. I don't
8 know what your Honor's looking at, but we provided a number of
9 them. We didn't spring them on them. Counsel had these almost
10 a year ago. Counsel complained that they didn't have them
11 earlier. Counsel filed a motion *in limine*. This is — and
12 counsel has — until 2:40 yesterday afternoon, despite the fact
13 that counsel had these documents since last November and
14 Mr. Vardaman testified that it was ad hoc and there's no basis
15 to think that there are any others in existence. This is a
16 belated request that is just intended to harass — counsel has
17 no reason to believe that any others exist, and I don't have
18 any reason to believe any others exist. Your Honor, we looked
19 for documents. We produced documents. I don't know why we're
20 still talking about discovery when Judge Gorenstein said she
21 couldn't have any.

22 MS. GREENE: Your Honor, we're not asking for new
23 discovery. We're asking that they honor their obligations to
24 supplement discovery. Documents were produced for, I believe,
25 February 1 — sorry, January 2, February 5, February 14,

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1 February 21. Now, between the 21st and the 28th is when he had
2 the conversation with Ms. Rowe, and there's nothing after the
3 21st.

4 Now, again, until Mr. Vardaman came on the stand and
5 gave his testimony as to how these documents were created —
6 remember, these were produced two years after we deposed him in
7 this matter. It was his testimony talking about the nature and
8 creation of these documents which were being — I think trying
9 to be used as business records and testifying about how that
10 related to the consideration. It's not on us, it's on them to
11 supplement pursuant to their Federal Rules of Civil Procedure
12 26 obligations. That doesn't end at trial. That doesn't end
13 at any point in time. That's ongoing in nature. And we are in
14 trial, and they have brought those — those documents and that
15 testimony into dispute. And again, at a minimum, they should
16 come back and represent to the Court if there are no other
17 documents after February 21.

18 MR. GAGE: Your Honor, counsel has no reason to think
19 there are any others. Mr. Vardaman testified that he did these
20 on an ad hoc basis. Counsel had Mr. Vardaman's testimony last
21 Friday. They've known about these documents for nearly 12
22 months. They've never asked for anything. They waited until
23 2:40 yesterday afternoon to raise this issue.

24 I should also add, your Honor, that after this trial,
25 original trial date got kicked — you may remember this because

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of the dispute over Ms. Florissi — counsel specifically came to us and asked us to supplement additional discovery. None of it related to this. They didn't ask us to go back and look for more. They wanted documents regarding performance reviews. They wanted compensation information. And, again, we have no reason to believe anything else exists.

This is a baseless accusation. We have honored our obligations. We satisfied our Rule 26 obligations, and they just waited till the last minute to create this issue.

THE COURT: I want you to, each of you, send me your authorities that you're relying on in taking your respective positions, and you can tell me what format you want to do that in and what time you want to send it.

MS. GREENE: Your Honor, I have one other question.

THE COURT: Yes.

MS. GREENE: And that is with respect to — two related questions. One is with respect to the allocation of time for closing arguments.

THE COURT: Yes.

MS. GREENE: And the second is as to order. It would be plaintiff's preference, as the one who bears the burden, that she go first and be able to reserve rebuttal time out of her total allotment. And that's the way I've done it in many other cases, so we would hope your Honor would agree with that.

In terms of how much time we would seek, we would seek

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1 an hour and 15 minutes in total time.

2 THE COURT: All right. Mr. Gage, go ahead.

3 MR. GAGE: I guess I'll be shocked, Judge, but I'll
4 agree with counsel. I have no problem with them reserving some
5 time, and an hour and 15 minutes seems fine, your Honor.

6 Ms. Tomezsko and I will be doing Google's closing together, so
7 we'll know how to allocate our time. If you're going to give
8 us an hour 15, whatever your Honor —

9 THE COURT: I actually decided that I am not going to
10 impose time limits on summations. I would just ask that you be
11 as efficient as possible and don't waste time. And, of course,
12 it's in everyone's interests, I think, that the case go to the
13 jury as quickly as possible now.

14 (Continued on next page)

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1 MR. GAGE: So your Honor, in light of everything we've
2 discussed, we're having a charge conference tomorrow, and we
3 anticipate the proof to go till mid afternoon. Should we plan
4 on all closing arguments being Friday morning, just because --
5 in fairness to the plaintiff, I wouldn't want us to get to the
6 4:30 or so break and them having reserved time for rebuttal and
7 then getting squeezed.

8 THE COURT: I think that's probably what we're going
9 to have to do. Because the jury -- I asked them to come to be
10 here by 9, to start at 9:15. I mean, we could go to 5
11 tomorrow, but that's probably not going to solve the problem.
12 We could start earlier than usual on Friday morning, although I
13 don't know, Ms. Williams, how -- we may have jurors who have,
14 you know, childcare issues and whatnot and can't get here
15 earlier than a particular time. But I think that's probably
16 what we're going to have to do.

17 MR. GAGE: Okay. So we'll plan on it for Friday,
18 closings for Friday?

19 THE COURT: Ms. Greene, is that okay with you?

20 MS. GREENE: Yes, your Honor, that's fine.

21 And I would propose that with respect to the
22 supplemental discovery issue, that the parties submit their
23 letters by about 9 o'clock.

24 THE COURT: Why don't you do --

25 MS. GREENE: We worked cooperatively last time. It

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1 was beyond the time your Honor asked, but we agreed amongst
2 ourselves to try to get it as promptly as we could, as we ran
3 into difficulties meeting that time deadline. I'd ask that we
4 be allowed to do the same.

5 THE COURT: Yes, of course. That's fine.

6 Actually having solicited your feedback on format,
7 I've now decided that I want you to do a joint letter. So
8 you'll do that and send it to me as close to 9 as you can.

9 My chambers, since we're working on the charges, we
10 don't have time to do your research for you on this issue, so
11 we would appreciate having your authorities laid out in a
12 submission.

13 All right. Anything else?

14 MS. GREENE: No, your Honor.

15 MR. GAGE: Nothing.

16 THE COURT: Okay. Very good.

17 (Adjourned to October 19, 2023 at 8:30 o'clock a.m.)

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